No. 98-896

In The

Supreme Court of the United States

MARK ROTELLA,

Petitioner,

v.

ANGELA M. WOOD, M.D., et al.,

Respondents.

On Writ Of Certiorari
To The United States Court Of Appeals
For The Fifth Circuit

JOINT APPENDIX

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IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

MARK ROTELLA, Plaintiff	§	
VS.	§	
ANGELA M. WOOD, M.D., GARY LEE ETTER, M.D., WILLIAM M. PEDERSON, M.D., GROVER LAWLIS, M.D., DAVID R. BAKER, M.D., LARRIE W. ARNOLD, M.D., FRED L. GRIFFIN, M.D., LESLIE H. SECREST, M.D., JOHN M. ZIMBUREAN, M.D., BRADFORD M. GOFF, M.D., RONALD FLEISCHMANN, M.D., DALLAS PSYCHIATRIC ASSOCIATES, DAVID R. BAKER, M.D., P.A., LARRIE W. ARNOLD, M.D., P.A., LESLIE H. SECREST, M.D., P.A., WILLIAM M. PEDERSON, M.D., P.A., FRED L. GRIFFIN, M.D., P.A., RONALD FLEISCHMANN, M.D., P.A., BRADFORD M. GOFF, M.D., P.A., GROVER LAWLIS, M.D., P.A., ANGELA M. WOOD, M.D., P.A., JOHN M. ZIMBUREAN, M.D., P.A., GARY LEE ETTER, M.D., FRANK TRIMBOLI, M.D., MYRON S. LAZAR, Ph.D., Defendants.	§	NO: 497-CV 555-Y
	§	(Filed Jul. 9, 1997)

PLAINTIFF'S ORIGINAL COMPLAINT

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW MARK DAVID ROTELLA, **PLAINTIFF** in the above-captioned matter and files this his Original Complaint and would respectfully show the Court the following:

1. **PLAINTIFF** is a resident of Dallas County, Texas.

2. **DEFENDANTS** ANGELA M. WOOD, M.D. (hereinafter **"WOOD"**) GARY LEE ETTER, M.D. (hereinafter **"ETTER"**), GROVER LAWLIS, M.D. (hereinafter **"LAWLIS"**), DAVID R. BAKER, M.D. (hereinafter **"BAKER"**), WILLIAM M. PEDERSON, M.D. (hereinafter **"PEDERSON"**), LESLIE H. SECREST, M.D. (hereinafter **"SECREST"**), JOHN M. ZIMBUREAN, M.D. (hereinafter **"ZIMBUREAN"**), LARRIE W. ARNOLD, M.D. (hereinafter **"ARNOLD"**), BRADFORD M. GOFF, M.D. (hereinafter **"GOFF"**), FRED L. GRIFFIN, M.D. (hereinafter **"GRIFFIN"**), RONALD FLEISCHMANN, M.D. (hereinafter **"FLEISCHMANN"**), DALLAS PSYCHIATRIC ASSOCIATES, A PARTNERSHIP (hereinafter **"DPA"**), ANGELA M. WOOD, M.D., P.A. (hereinafter **"WOOD P.A."**), GARY LEE ETTER, M.D., P.A. (hereinafter **"ETTER P.A."**), GROVER LAWLIS, M.D., P.A. (hereinafter **"LAWLIS P.A."**), DAVID R. BAKER, M.D., P.A. (hereinafter **"BAKER P.A."**) WILLIAM M. PEDERSON, M.D., P.A. (hereinafter **"PEDERSON P.A."**) LESLIE H. SECREST, M.D., P.A. (hereinafter **"SECREST P.A."**), JOHN M. ZIMBUREAN, M.D., P.A. (hereinafter **"ZIMBUREAN P.A."**), LARRIE W. ARNOLD, M.D., P.A. (hereinafter **"ARNOLD P.A."**), BRADFORD M. GOFF, M.D., P.A. (hereinafter **"GOFF P.A."**), FRED L. GRIFFIN, M.D.,

P.A. (hereinafter **"GRIFFIN P.A."**), and RONALD FLEISCHMANN, M.D., P.A. (hereinafter **"FLEISCHMANN P.A."**), **TRIMBOLI**, and **LAZAR** will be served in accordance with the Federal Rules of Civil Procedure.

3. **DPA** is a general partnership, formerly doing business in Dallas County, Texas, now located in Tarrant County, Texas, which **PLAINTIFF** believes has dissolved. **ARNOLD, P.A., SECREST, P.A., BAKER, P.A., PEDERSON, P.A., GRIFFIN, P.A., FLEISCHMANN, P.A., GOFF, P.A., LAWLIS, P.A., WOOD, P.A., ZIMBUREAN, P.A.,** and **ETTER, P.A.** are duly constituted professional associations, chartered by the State of Texas, and each is or was a partner of **DPA**. At all times material to this Complaint, **ARNOLD, ARNOLD, P.A., BAKER, BAKER, P.A., GOFF, GOFF, P.A., ETTER, SECREST, SECREST, P.A., LAWLIS, FLEISCHMANN, PEDERSON, PEDERSON, P.A., GRIFFIN, GRIFFIN, P.A., ZIMBUREAN, WOOD,** and **WOOD, P.A.** were employees and/or agents of **DPA. ZIMBUREAN, P.A.** has been a partner and agent of **DPA** since the inception of **ZIMBUREAN, P.A.** on or about July, 1990. **LAWLIS, P.A., ETTER, P.A.** and **FLEISCHMANN, P.A.,** have been partners and agents of **DPA** since 1988. **BAKER, P.A.** came to be a partner in **DPA** on or about 1986. **ARNOLD** was also an employee and/or agent of **ARNOLD, P.A. LAWLIS** was also an employee and/or agent of **LAWLIS, P.A. GOFF** was also an employee of and/or agent for **GOFF, P.A. BAKER** was also an employee and/or agent of **BAKER, P.A. FLEISCHMANN** was also an employee and/or agent of **FLEISCHMANN, P.A. ETTER** was also an employee and/or agent of **ETTER, P.A. SECREST** was also an

employee of and/or agent for **SECREST, P.A. PEDERSON** was also an employee of and/or agent for **PEDERSON, P.A. WOOD** was also an employee and/or agent for **WOOD, P.A. GRIFFIN** was also an employee of and/or agent for **GRIFFIN, P.A. ZIMBUREAN** was also an employee of and/or agent for **ZIMBUREAN,** P.A. since the inception of **ZIMBUREAN, P.A.** in or about July, 1990. As such, **ARNOLD, ARNOLD, P.A., SECREST, SECREST, P.A., BAKER, BAKER, P.A., PEDERSON, PEDERSON, P.A., GRIFFIN, GRIFFIN, P.A., FLEISCHMANN, FLEISCHMANN, P.A., GOFF, GOFF, P.A., LAWLIS, LAWLIS, P.A., WOOD, WOOD, P.A., ZIMBUREAN, ZIMBUREAN, P.A., ETTER,** and **ETTER, P.A.** operated individually and on behalf of **DPA. ARNOLD** additionally operated on behalf of **ARNOLD, P.A. SECREST** additionally operated on behalf of **SECREST, P.A. PEDERSON** additionally operated on behalf of **PEDERSON, P.A. GRIFFIN** additionally operated on behalf of **GRIFFIN, P.A. FLEISCHMANN** additionally operated on behalf of **FLEISCHMANN, P.A. GOFF** additionally operated on behalf of **GOFF, P.A. LAWLIS** additionally operated on behalf of **LAWLIS, P.A. WOOD** additionally operated on behalf of **WOOD, P.A. ZIMBUREAN** additionally operated on behalf of **ZIMBUREAN, P.A. ETTER** additionally operated on behalf of **ETTER, P.A.**

4. At all times pertinent to this Complaint, **ARNOLD, LAWLIS, BAKER, TRIMBOLI, ZIMBUREAN, LAZAR, GOFF, GRIFFIN, FLEISCHMANN, PEDERSON, WOOD, SECREST,** and **ETTER** were admitted to the medical or allied staff of **R.H. DEDMAN**

MEMORIAL MEDICAL CENTER (hereinafter **"DEDMAN"**) in Dallas, a facility owned and operated by **NME HOSPITALS, INC.** (hereinafter **"BROOKHAVEN"**) and/or **NATIONAL MEDICAL ENTERPRISES (NME)** and/or **PSYCHIATRIC INSTITUTES OF AMERICA (PIA),** which includes **BROOKHAVEN. ARNOLD** served as Medical Director of **BROOKHAVEN.** At some times pertinent hereto, **LAWLIS, WOOD, GOFF, SECREST, FLEISCHMANN,** and **PEDERSON** were under contract to serve as unit directors of the Adolescent Psychiatric Unit of **BROOKHAVEN,** and **GRIFFIN, LAWLIS, BAKER, ARNOLD, WOOD, GOFF, SECREST, ETTER, ZIMBUREAN, FLEISCHMANN** and **PEDERSON** were designated to serve as unit chiefs of various units of **BROOKHAVEN.** At all times material to this Complaint, **ARNOLD, LAWLIS, ZIMBUREAN, GOFF, GRIFFIN, FLEISCHMANN, PEDERSON, BAKER, WOOD, SECREST,** and **ETTER** acted on their own behalf, and as agents or ostensible agents of **BROOKHAVEN,** with **ARNOLD** also operating on behalf of **NME HOSPITALS** and/or **NME** and/or **PIA.**

5. **PLAINTIFF** had his first encounter with the fraudulent health care practices of **DEFENDANTS** in February of 1985, when he was taken to **BROOKHAVEN** on an Order of Protective Custody by Dallas County Deputy Sheriffs from Parkland Hospital's Emergency Room. **PLAINTIFF** was handcuffed from the time he left Parkland until he was behind the locked doors of **BROOKHAVEN. PLAINTIFF** was taken by state employees or agents to **BROOKHAVEN,** even though Texas law required his consent to confinement in an ostensibly private facility, rather than a state-owned and

operated facility such as Terrell. At the age of sixteen (16), **PLAINTIFF** was admitted to **BROOKHAVEN** for psychiatric treatment on February 19, 1985. Initially, **PLAINTIFF** was diagnosed as suffering from major depression, although this evaluation was later changed to the severe and inappropriate affliction of borderline personality disorder. **PLAINTIFF** remained at **BROOKHAVEN** until his release on June 16, 1986. **PLAINTIFF** endured 479 days confined in an acut[ ] care mental hospital against his will. During this period, **ETTER** and **WOOD** served as **PLAINTIFF's** attending psychiatrists.

6. At the time of his admission to **BROOKHAVEN, PLAINTIFF** denies he had any problems requiring court-ordered commitment or inpatient treatment in a psychiatric hospital. To the contrary, **PLAINTIFF** contends that he effectively could have been treated as an outpatient. The most significant aspect of **PLAINTIFF's** admission to **BROOKHAVEN** was that he had a financially secure father who had excellent health insurance coverage capable of paying for **PLAINTIFF's** admission to and sustained treatment in a private psychiatric hospital.

7. When **PLAINTIFF** was admitted to **BROOKHAVEN** on order of Protective Custody, he was confined on Unit B of the hospital for sixteen (16) days, despite **PLAINTIFF's** status as an adolescent. Under pressure from **ETTER** and others, **PLAINTIFF** eventually waived his right to contest the commitment hearing and applied for admission to **BROOKHAVEN. PLAINTIFF** was not transferred to the adolescent unit of Brookhaven, Unit C, until he had been confined at **BROOKHAVEN** for over two weeks. **PLAINTIFF** alleges that this internment on Unit B of **BROOKHAVEN** for an extended period of

time was both unnecessary and inappropriate to his medical condition. **PLAINTIFF** further alleges that **DEFENDANTS** failed to develop or implement an appropriate treatment plan for **PLAINTIFF** during this extended period of confinement on Unit B. He simply was in a "holding pen".

8. **PLAINTIFF** initially was directed to **BROOKHAVEN** by **DAVID BAKER, M.D.**, then, as **DAVID BAKER, M.D., P.A,** a partner of **DPA**, who had contacts in Parkland's Emergency room. **BAKER** is listed in **PLAINTIFF's** medical record as his admitting physician. **PLAINTIFF** alleges that agents of Defendant **DPA**, acting on its behalf, approved **PLAINTIFF's** admission to Unit B of **BROOKHAVEN** without having personally evaluated **PLAINTIFF**.

9. In the course of evaluating **PLAINTIFF** for long-term treatment at **BROOKHAVEN,** the only psychiatric and/or psychological professionals consulted by **ETTER** and to whom **PLAINTIFF** was referred for evaluation and treatment were **WOOD** and/or **PEDERSON** and/or **FRANK E. TRIMBOLI, Ph.D.** All of the mental health care professionals named in this paragraph shared an economic interest in the referral of patients to **DPA** and in the prolonged confinement of **PLAINTIFF** at **BROOKHAVEN**, as **DPA** had an extensive arrangement with **BROOKHAVEN** that mandated that all persons admitted to **BROOKHAVEN** be assigned to a **DPA**-Defendant psychiatrist as the patient's attending psychiatrist. **PLAINTIFF** alleges that this relationship between **DPA** and **BROOKHAVEN** was inappropriate, illegal and resulted in the improper referral of **PLAINTIFF** to **DPA,**

thereby extending his period of confinement at **BROOKHAVEN**.

10. **PLAINTIFF** further alleges that **WOOD** and her treatment staff at **BROOKHAVEN** failed to develop a comprehensive treatment plan for **PLAINTIFF** on a timely basis as required by the Joint Commission on the Accreditation of Hospitals (hereinafter referred to as "the **JCAH**") Adherence to the standards of the **JCAH** is mandatory for the accreditation of hospitals by the Joint Commission. Specifically, the **JCAH** standards violated by the **DEFENDANTS** include, but are not limited to, the following:

a. Standard TP.1: "For each patient, there is a written, comprehensive, individualized treatment plan that is based upon assessments of the patient's clinical needs." **DEFENDANTS** failed to adhere to this standard.

b. Standard TP.1.3: "Within 72 hours following admission to any in-patient, residential, or partial-day treatment facility, or upon completion of the intake process for partial hospitalization or out-patient treatment, a designated member of the treatment team develops a treatment plan that is based on, at the least, an assessment of the patient's present problems, physical health, emotional status, and behavior status." **DEFENDANTS** failed to adhere to this standard.

c. Standard TP.1.3.1: "The treatment plan is utilized to implement immediate treatment objectives." **DEFENDANTS** failed to adhere to this standard.

d. Standard TP.1.8: "The treatment plan contains specific objectives that relate to the goals, are written in measurable terms, and include expected achievement dates." **DEFENDANTS** failed to adhere to this standard.

e. Standard TP.1.12: "The treatment plan delineates the specific criteria to be met before termination of treatment." **DEFENDANTS** failed to adhere to this standard.

f. Standard TP.1.12.1: "The criteria are part of the treatment plan." **DEFENDANTS** failed to adhere to this standard.

In contravention of these standards, **WOOD** and her treatment staff were slow to develop a treatment plan for **PLAINTIFF,** failed to develop identifiable, measurable goals for the treatment of **PLAINTIFF,** and failed to revise these goals during the course of **PLAINTIFF's** treatment at **BROOKHAVEN**.

11. During his confinement at **BROOKHAVEN, PLAINTIFF** was placed in four-point bed or wheelchair restraints and seven-point bed restraints by order of Defendant **WOOD**. Defendant **WOOD** failed to note any objections in **PLAINTIFF's** medical records to **PLAINTIFF** being shackled in four-point or seven-point restraints to his bed or to a wheelchair, and **PLAINTIFF** further alleges that neither she nor any of the other **DEFENDANTS** did anything to secure his release therefrom or to report this abusive treatment to the appropriate authorities, despite a clear legal duty to have done so.

12. **PLAINTIFF** was physically restrained intermittently throughout his confinement at **BROOKHAVEN.**

On at least one occasion, the restraints were fashioned out of sheets[1] and resulted in physical injuries and sheet burns to **PLAINTIFF** in violation of both **BROOKHAVEN** and **JCAH** standards. **PLAINTIFF** alleges that these acts constitute actionable child abuse, which was not reported to an appropriate authority by any of the **DEFENDANTS** despite a clear legal duty to have done so.

13. During this time there is no indication in the record that **PLAINTIFF** presented a threat of violence to either himself of others at **BROOKHAVEN** sufficient to warrant such restraint. Similarly, there is no indication that other, less restrictive means of intervention were attempted by Defendant **WOOD** or other **DEFENDANTS** and found to be unsuccessful. Further, during the time he was physically restrained, **PLAINTIFF** continued to attend group therapy with his peers, with **PLAINTIFF** wheeled into the group shackled to his bed or a wheelchair.

14. During the time **PLAINTIFF** was physically restrained by **DEFENDANTS,** he was deprived of basic human dignity and humiliated before his peers. **PLAINTIFF** was forced to eat, change clothes, attend to personal hygiene, eliminate waste, attend therapy, and pursue his education while shackled to four-point restraints either to a bed or wheelchair.

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[1] While the restraints themselves were made from sheets, **PLAINTIFF** alleges the reasons for the restraints were "made out of whole cloth".

15. This physical restraint of **PLAINTIFF** during his confinement at **BROOKHAVEN,** implemented and maintained with the consent of Defendant **WOOD** and other members of her treatment staff, is in direct contravention of standards developed by the **JCAH.** Specifically, the standards violated by Defendant **WOOD** and other members of the medical staff of **BROOKHAVEN** include, but are not limited to, the following:

a. Standard SC.2.1: "The use of restraint or seclusion requires clinical justification." **DEFENDANTS** failed to adhere to this standard.

b. Standard SC.2.1.1: "Restraint or seclusion is used only to prevent a patient from injuring himself or others or to prevent serious disruption of the therapeutic environment. **DEFENDANTS** failed to adhere to this standard.

c. Standard SC.2.1.2: "Restraint or seclusion is not used as a punishment or for the convenience of the staff." **DEFENDANTS** failed to adhere to this standard.

d. Standard SC.2.1.3: "The rationale for the use of restraint or seclusion addresses the inadequacy of less restrictive intervention techniques." **DEFENDANTS** failed to adhere to this standard.

e. Standard SC.2.6: "All uses of restraints are reported daily to the head of the professional staff and/or his designee." **DEFENDANTS** failed to adhere to this standard.

f. Standard SC.2.7: "The head of the professional staff and/or his designee reviews

daily all uses of restraint or seclusion and investigates unusual or possibly unwarranted patterns of utilization." **DEFENDANTS** failed to adhere to this standard.

g. Standard SC.2.10: "Appropriate attention is paid every 15 minutes to a patient in restraint or seclusion, especially in regard to regular meals, bathing, and use of toilet." Standard SC.2.10.1 further provides that "there is documentation in the patient record that such attention was given to the patient." **DEFENDANTS** failed to adhere to these standards.

h. Standard PI.2.1.2: "Each patient's personal dignity is recognized and respected in the provision of all care and treatment." **DEFENDANTS** failed to adhere to this standard.

i. Standard TH.1: "The facility establishes an environment that enhances the positive self-image [of patients] and preserves their human dignity." **DEFENDANTS** failed to adhere to this standard.

DEFENDANTS repeatedly and unjustifiably violated these industry standards, adherence to which is mandatory for the accreditation of hospitals by the Joint Commission, during **PLAINTIFF's** confinement at **BROOKHAVEN**.

16. **PLAINTIFF** was also subjected to months of restricted activity during his confinement at **BROOKHAVEN** which was both medically unnecessary and inappropriate. These restrictions included, among

others, confinement to his unit at **BROOKHAVEN**, confinement to his room, chair restriction and chair therapy, elopement precautions, suicide precautions, restriction of contact with family members and other persons of his choice, telephone restriction, personal hygiene and grooming restrictions, restricted contact with peers, and close and intrusive observations by hospital staff. From the date of his admission, **PLAINTIFF** was not allowed outdoors for many months. When he finally was allowed to go outdoors, his eyes were hurt by the sunlight of which they had been deprived for so long. **PLAINTIFF** alleges that this treatment constituted actionable child abuse, which was not reported to any appropriate authority by any of the **DEFENDANTS**.

17. **PLAINTIFF** suffered additional punitive treatment during his confinement at **BROOKHAVEN**. On many occasions, **PLAINTIFF** was subjected to a practice employed at **BROOKHAVEN** referred to as "chair therapy." Chair therapy involved **PLAINTIFF** being restricted to sitting in a chair in his room or in a hallway facing the wall for indefinite periods of time, with the exception of attending school and medical meetings or upon doctor's orders. For large portions of his stay, **PLAINTIFF** was subjected to "indefinite chair" by order of Defendant **WOOD** and was restricted to his room for a significant portion of that time.

18. Chair therapy has been identified as an experimental therapy by representatives of **PIA**, **BROOKHAVEN** and/or **NME** in testimony given to the Texas State Interim Committee on Health and Human Services. This characterization was made by Scott Winter,

M.D., former Medical Director of Bedford Meadows Hospital, a **PIA**-owned and/or operated hospital in Tarrant County, Texas, testifying on behalf of **BROOKHAVEN**, **NME**, and **PIA** before the Senate Subcommittee on January 16, 1992. In his comments to the Subcommittee, Dr. Winter made the following observations with respect to "rage therapy" and "chair therapy":

> I do know that they would probably fit in the category of experimental therapies, and that at my hospital, our bylaws specifically prohibit us from using experimental drugs or experimental therapies, and the only way to change that would be through an action that included the entire medical staff.
>
> I guess what I'm really getting around to is, is that I think the rage therapy and the in-the-chair therapy were probably pretty well isolated incidents at hospitals where the medical control wasn't as it was intended to be.

Dr. Winter further indicated that the practice of chair therapy was limited to **BROOKHAVEN**. **PLAINTIFF** alleges that this treatment constituted actionable child abuse, which was not reported to any appropriate authority by any of the **DEFENDANTS**.

The abuse which **PLAINTIFF** suffered at the hands of **WOOD** and her staff, physical restraint, chair therapy, restriction from normal activities of daily living, and intimidation, were part of a concerted pattern of activity engaged in by **WOOD** and other members of the conspiracy complained of herein designed to overcome **PLAINTIFF's** will and keep him hospitalized in **BROOKHAVEN** irrespective of his need for such hospitalization, so long

as his insurance company was willing to pay for his treatment.

19. Throughout his confinement, **PLAINTIFF** expressed to **DEFENDANTS** his desire to leave **BROOKHAVEN**. Despite the fact that **PLAINTIFF** did not meet the requirements for court-ordered commitment, Defendant **WOOD** did not assist him to leave or suggest that the confinement of **PLAINTIFF** be terminated, ultimately causing **PLAINTIFF** to remain at **BROOKHAVEN** for 479 days. In fact, Defendant **WOOD** continued to represent to **PLAINTIFF,** his parents, and his father's insurance company that **PLAINTIFF** required further inpatient treatment, when he clearly did not. **WOOD** took advantage of her fiduciary relationship with **PLAINTIFF** to convince him to trust her "judgment", rather than his own.

20. During his confinement at **BROOKHAVEN, PLAINTIFF** executed and submitted five (5) 96-hour letters requesting that he be allowed to leave the facility pursuant to former Article 5547-25 of the *Texas Mental Health Code*. This statute sets forth certain rights possessed by every "voluntary" patient[2] over the age of sixteen at a mental health care facility. Specifically, these privileges include the "right to leave the mental health care facility within 96 hours, after filing with the head of the mental health facility or his designee, a written request for release, signed by the patient or other person

[2] Although **PLAINTIFF** initially was an involuntary patient at **BROOKHAVEN**, he was persuaded into applying for voluntary admission, and thus "engaged" the right to leave the hospital.

responsible for the patient's admission unless prior to the expiration of the 96 hour period: (a) written withdrawal of the request for release is filed; or (b) an application for court-ordered mental health services or emergency detention is filed and the patient is detained in accordance with the provision of this code." **PLAINTIFF** was over the age of sixteen (16) at the time of the submission of each of the five (5) 96-hour letters.

21. **DEFENDANTS** failed to respond to one of **PLAINTIFF's** legitimate requests to be released from **BROOKHAVEN** within the time permitted by Article 5547-25, thereby giving **PLAINTIFF** the right to leave the facility under the statute. **DEFENDANTS,** however, did not release **PLAINTIFF** at this time, despite a clear legal duty to have done so.

22. Following this exercise of his statutory rights, **PLAINTIFF** was pressured and intimidated by Defendants **WOOD, PEDERSON,** and others into retracting each of these 96-hour letters and remaining in the hospital after the presentation of his legitimate requests to leave the facility. **PLAINTIFF** alleges that **DEFENDANTS** compelled him to remain in **BROOKHAVEN** for the purpose of maintaining **BROOKHAVEN's** patient census pursuant to an illegal arrangement between **DPA** and **PIA,** and to increase their own profits.

23. **PLAINTIFF** further alleges that the excessive restrictions imposed upon him by Defendant **WOOD** and other members of the medical staff at **BROOKHAVEN** violated numerous standards of the **JCAH,** including, but not limited to, the following:

a. JCAH Standard RH.7: "There is documentation that patients are given leisure time and that they are encouraged to use their leisure time in a way that fulfills their cultural and recreational interests and their feelings of human dignity." **DEFENDANTS** failed to adhere to this standard.

b. JCAH Standards PI.4.1 and PI.4.1.5: "Full information is given on the following: the risks, side-effects, and benefits of all medications, and treatment procedures used, especially those that are unusual or experimental." **DEFENDANTS** failed to adhere to these standards.

There is no documentation indicating that the risks, side effects, or benefits of chair therapy, physical restraint or other therapies used by **DEFENDANTS** were disclosed to **PLAINTIFF** or his family during the period of his treatment. **PLAINTIFF** alleges that this practice constitutes actionable child abuse, which was not reported to any appropriate authority by Defendant **WOOD** or any other member of the treatment team at **BROOKHAVEN**.

24. **PLAINTIFF** alleges that the medical treatment given to him by **DEFENDANTS** was not reasonably necessary for the care of his condition. **PLAINTIFF** further alleges that not all of the treatment reported to **PLAINTIFF's** insurance company and to **PLAINTIFF** or his parents on bills provided by **DEFENDANTS** was provided to **PLAINTIFF.**

25. **PLAINTIFF** further alleges that **DEFENDANTS** arranged **PLAINTIFF's** admission to **BROOKHAVEN,** assessed **PLAINTIFF's** insurance benefits and prolonged his stay at **BROOKHAVEN** in order to maximize the

partnership profits of Defendant **DPA** and the individual profits of its partners.

Defendant **TRIMBOLI** had an exclusive relationship with **DPA** whereby he provided all psychological testing done for patients at **BROOKHAVEN. PLAINTIFF** alleges that Defendant **TRIMBOLI** and **DPA** had a partnership for this purpose, and that Defendant **TRIMBOLI** actively participated in the lengthening of stay for patients at **BROOKHAVEN** or in obtaining insurance coverage when an admission had been doubtful.

Since **DPA** controlled access to the medical staff of **BROOKHAVEN,** only those physicians, psychiatrists, and other counselors who were approved by **DPA** could treat patients at **BROOKHAVEN. DPA** developed a number of referral relationships in which it allowed a referring therapist to serve as an individual therapist for his or her patient while that person was at **BROOKHAVEN** and allowed the therapist to receive other patients for individual therapy who had come to **BROOKHAVEN** without the recommendation of someone already credentialed there for that purpose. **PLAINTIFF** alleges that this is how Defendant **LAZAR** became involved in his treatment. **PLAINTIFF** had not seen Defendant **LAZAR** prior to his admission to **BROOKHAVEN,** and had **LAZAR** thrust upon him as an individual theraptist shortly after his transfer to Unit C. **PLAINTIFF** alleges that Defendant **WOOD** orchestrated the selection of Defendant **LAZAR** to be **PLAINTIFF's** individual therapist in order to reward Defendant **LAZAR** for having referred other patients to **BROOKHAVEN** in the past.

26. **PLAINTIFF's** parents were charged by Defendant **DPA** for treatment allegedly afforded him by Defendants **WOOD** and **ETTER** while **PLAINTIFF** was detained at **BROOKHAVEN.**

27. Defendant **DPA** collected benefits from **PLAINTIFF's** insurance carriers for treatment allegedly afforded **PLAINTIFF** during his detention at **BROOKHAVEN.**

28. Many personal items were taken from **PLAINTIFF** by **ETTER, WOOD,** or other staff and were never returned to him.

29. **PLAINTIFF** alleges that Defendants **DPA, ARNOLD, ARNOLD, P.A., SECREST, SECREST, P.A., PEDERSON, PEDERSON, P.A., GRIFFIN, GRIFFIN, P.A., FLEISCHMANN, FLEISCHMANN, P.A., GOFF, GOFF, P.A., LAWLIS, LAWLIS, P.A., WOOD, WOOD, P.A., BAKER, BAKER, P.A., ZIMBUREAN, ZIMBUREAN, P.A., ETTER, ETTER, P.A.,** and other persons or entities not a party to this lawsuit or presently unknown to **PLAINTIFF** entered into an arrangement for the medical staffing of **BROOKHAVEN** beginning in or before 1984, and continuing through at least June, 1991, which was improper and illegal. **PIA** and **PETER ALEXIS** have pled guilty in federal court to charges of conspiracy and have identified a contract with Defendant **DPA** as one of the overt acts undertaken in furtherance of the conspiracy to which they confessed. PIA pled guilty in Case No. 94-0268, in the United States District Court for the District of Columbia, to conspiracy, the inception of which was contemporaneous with **PLAINTIFF's** hospital stay at **BROOKHAVEN.** The purpose of the conspiracy "was for the defendant [**PIA**] and its co-conspirators to

increase the patient census at the defendant's hospitals, and thereby increase profits, by paying money and conferring other benefits upon individuals, including doctors and medical professionals, who were in a position to refer patients to those hospitals, in order to induce them to refer patients" (Information, page 4). The following facts were contained in the Information to which **PIA** pled guilty:

> 12. The DEFENDANT and others would assign hospitalized patients to doctors for inpatient treatment based upon the number of patients the doctors had referred. The DEFENDANT and others would reward "high admitters" by referring patients for outpatient treatment to those doctors. At times, hospitals referred one patient for every two patients that the doctor had referred.
>
> 15. The DEFENDANT and others would enter into various types of personal service contractual relationships with doctors and other referral sources which were designed to provide them financial inducements to refer patients to DEFENDANT's hospitals.
>
> 16. The DEFENDANT and others would enter into contracts to pay doctors and other referral sources to be "Directors" and "Consultants" at DEFENDANT's hospitals, in order to induce them to refer patients to the hospitals.
>
> 17. The DEFENDANT and others would instruct its employees that the contract amounts to be paid to the doctors should be based upon the number of patients the

doctor or referral source was expected to refer to the facility, and the amount of income the hospital expected to earn as a result of admitting and treating those patients.

18. The DEFENDANT and others would disguise the fact that these contract payments were made to induce patient referrals, by fraudulently stating in the contract documents that the Director and Consultant was to perform certain specified duties for DEFENDANT, when in fact the Director and Consultant was not expected to perform the duties as described.

19. The DEFENDANT and others would falsely make it appear that the contract amount paid to the doctors and referral sources was based on the fair market value of the services to be provided under the contract, when in fact it was inflated to induce referrals.

20. The DEFENDANT and others would falsely make it appear that the agreed-upon amounts of compensation were for working a certain minimum number of hours, or performing certain specified duties, when in fact the doctors and referral sources were not required to work those hours, or to perform the specified duties.

21. The DEFENDANT and others would falsify time and attendance sheets to make it appear that the Directors and Consultants worked the number of hours required under the contract.

22. The DEFENDANT and others would induce referrals by providing "incentive bonuses" to Directors and Consultants that were based upon the average daily census of hospitalized patients, or based upon the profitability of the hospital, in order to induce the Directors and Consultants to refer more patients to the hospitals and to induce them to keep the patients hospitalized longer.

29. As part of the conspiracy, the DEFENDANT and others would enter into financial arrangements with doctors and other referral sources which would falsely make it appear that the referral sources were being paid fair market value for providing services, when in fact the purpose of the agreements was to induce patient referrals and to maintain patient census at DEFENDANT's hospitals. The DEFENDANT did not intend that the services would be rendered as stated in the contract, and/or that the contract payments represented fair market value for the services actually provided. Among the agreements were the following agreements between the DEFENDANT's hospitals and referral sources:

    (1) in order to induce referrals, the DEFENDANT and others agreed to pay to a doctors' group $480,000 a year for six Unit Directors which the group provided to Brookhaven Psychiatric Pavilion, Dallas, Texas.

PETER ALEXIS pled guilty in Cause No. 3:94-CR-197-X, then pending in the Northern District of Texas. Among the facts set forth in the factual resume signed by **PETER**

ALEXIS and filed in Cause No. 3:94-CR-197-Y in support of Mr. Alexis' plea of guilty to a count of conspiracy, the inception of which was contemporaneous with **PLAINTIFF**'s hospital stay at **BROOKHAVEN**, is the following:

> (c) On or about March 15, 1990, PETER ALEXIS, while acting as Regional Vice President for the Texas Region of PIA, caused PIA to enter into a contract with a professional association of psychiatrists which provided that the association was to be paid a determined amount of money per year by Brookhaven Psychiatric Pavilion in Dallas, Texas. The payment was actually payment and remuneration for the members of the association referring patients to Brookhaven Psychiatric Pavilion.

29. The purpose of this arrangement or conspiracy, which began prior to **PLAINTIFF's** hospitalization and continued subsequent to it, was to secure patients for **BROOKHAVEN** and other psychiatric hospitals owned or operated by **NME** and/or **PIA** which would lead to profits for the members of the conspiracy or arrangement, and to funnel payments to physicians for the referral of patients to such hospitals and for prolonging the length of stay patients underwent in such hospitals.

30. In furtherance of this conspiracy, **BROOKHAVEN, NME HOSPITALS, NME** and/or **PIA** entered into Professional Services Agreements and other contracts with doctors, including **DEFENDANTS** herein, for illegal, excessive, unreasonable or unethical consideration in order to secure referrals from these doctors.

Under these contracts, little or no performance was expected of the physicians. **DPA** controlled the assignment of physicians to patients under contracts such as these from at least 1984 through March 15, 1990, thus insuring that money would flow to **DPA** with respect to every person admitted to **BROOKHAVEN**. In fact, **BROOKHAVEN** and **DPA** had a regular practice of collecting deposits upon admission of a patient and sharing them pursuant to a prescribed formula.

31. On or about March 15, 1990, as a further manifestation of its conspiracy with **DPA, PIA** entered into a Services Agreement with Defendant **DPA,** which "ratified" the exclusive staff arrangement and also funneled payments directly to **DPA**. Six doctors, each of whom was the sole shareholder and officer of a professional association which was a partner in Defendant **DPA**, agreed to serve as unit chiefs for six separate units of **BROOKHAVEN**. The Services Agreement is signed by **PIA** and Defendants **DPA, GRIFFIN, P.A., ARNOLD, P.A., LAWLIS, P.A., ETTER, P.A., WOOD, P.A., PEDERSON, P.A., FLEISCHMANN, P.A., GOFF, P.A., SECREST, P.A., FLEISCHMANN, ETTER, GOFF, WOOD, PEDERSON** and **LAWLIS**. It is also signed in their capacity as president of a corporation which was a partner in Defendant DPA by Defendants **GRIFFIN, ARNOLD, FLEISCHMANN, ETTER, GOFF, WOOD, PEDERSON, LAWLIS** and **SECREST**. The Services Agreement indicates that each unit chief is expected to perform duties on a part-time basis of between 10 and 11 hours per week, and that Defendant DPA was to be paid a total compensation of Four Hundred Eighty Thousand and No/100 Dollars ($480,000.00) per year for the services performed by

the unit chiefs. Upon information and belief, this contract or its successor was canceled by **PIA** and/or **NME**. **PLAINTIFF** alleges that the contract was canceled because the amount of consideration paid to Defendant **DPA** or its partners for the services of Defendants **ETTER, FLEISCHMANN, WOOD, PEDERSON, GOFF** and **LAWLIS,** who served as unit directors under the Agreement, was unconscionable or illegal.

32. Defendant **ARNOLD** served as Medical Director of **BROOKHAVEN** at the time **PLAINTIFF** was hospitalized at **BROOKHAVEN.** At this time, Defendant **ARNOLD** also owned 100% of the shares of Defendant **ARNOLD, P.A.,** which served as one of the partners of Defendant **DPA. PLAINTIFF** alleges that during the time he was hospitalized at **BROOKHAVEN,** the pavilion functioned essentially as a closed shop, with all attending psychiatrists either owning 100% of the shares of professional associations which were partners in Defendant **DPA,** or having entered into professional services agreements with Defendant **DPA.**

33. Because of this arrangement, which **PLAINTIFF** alleges was consented to by **NME HOSPITALS, NME** and/or **PIA,** there was no effective oversight of Defendants **ETTER's** and **WOOD's** treatment of **PLAINTIFF** available within **BROOKHAVEN** or **DEDMAN.** In fact, Defendant **ARNOLD** served as chairperson of the Brookhaven Pavilion Patient-Care Monitoring Committee of the medical staff of **DEDMAN** during **PLAINTIFF's** confinement at **BROOKHAVEN,** yet she had an economic interest in each patient admitted to **BROOKHAVEN.**

34. **PLAINTIFF** also alleges that he and his family were denied information concerning cost effective alternative treatment procedures such as day hospitalization or partial hospitalization that were available to him on February 19, 1985, and thereafter, in lieu of acute inpatient hospitalization.

35. The conspiracy or scheme alleged above concerning **BROOKHAVEN** was part of a massive, fraudulent conspiracy by which these **DEFENDANTS** attempted to secure profits by hospitalizing patients, such as **PLAINTIFF,** who did not require acute inpatient hospitalization, and maximizing the length of stay of such patients, to access their insurance benefits.

36. The conspiracy or scheme alleged above concerning **BROOKHAVEN** was part of a massive, fraudulent conspiracy by which these **DEFENDANTS** attempted to secure profits by hospitalizing patients, such as **PLAINTIFF,** who did not require acute inpatient hospitalization, in order to access their insurance benefits.

37. **PLAINTIFF's** date of birth is May 18, 1968. To the extent any **DEFENDANT** attempts to rely upon a statute of limitations, **PLAINTIFF** asserts (a) that his cause of action did not accrue until he learned that the injuries inflicted on him were part of a pattern of racketeering activity, and (b) the following tolling doctrines as affirmative defenses to limitations: (1) discovery rule; (2) fraudulent concealment and/or equitable estoppel; (3) duress; and, (4) the provisions of *Tex. Civ. Prac. & Rem. Code,* § 16.069. **PLAINTIFF** would show that the **DEFENDANTS** fraudulently concealed from him the existence of

his injury; then misled him into believing the actions of **DEFENDANTS** were therapeutic. **PLAINTIFF** did not discover his injury until shortly before he filed his Answer to the Petition which **DEFENDANTS** brought against him in this case. **PLAINTIFF** was hospitalized; he was coerced into submissively accepting the abusive actions by **DEFENDANTS** in the hospital when in fact such actions were harmful, because he thought he had no choice. He did not discover he was so coerced until shortly before he filed his Answer to the Petition which **DEFENDANTS** brought against him. **PLAINTIFF** was intimidated by the actions of **DEFENDANTS** into believing he could not do anything to leave the hospital and its abuse and was, upon release, afraid to challenge those who had wielded such power over him, lest he be incarcerated again. **PLAINTIFF** was right to fear **DEFENDANTS,** as they ultimately had him served with process in this action, effectively entering his home, showing him the power to which they could subject him. **PLAINTIFF** was intimidated by **DEFENDANTS** into believing that the abusive treatment they thrust upon him was appropriate, and he was under a reasonable and continuous feeling of duress due to such abusive acts, coercion and intimidation. **PLAINTIFF** has spent a large measure of the time which intervened between his discharge and his filing of his Answer to the **DEFENDANTS'** Petition in the United Kingdom and did not know of any news coverage of the abuses he and others had undergone at the hands of **DEFENDANTS. PLAINTIFF** did not discover the facts composing all the elements of his causes of action until the spring of 1994, when he was contacted by another former patient, Wendy Edelman. He did not know that

his doctors had been involved in a pattern of restricting activity prior to this time. On June 29, 1994, **PIA** pled guilty in a federal criminal guilty plea to a conspiracy which affected **PLAINTIFF. PLAINTIFF** further alleges **DEFENDANTS** have taken steps to cover up any wrongs done in furtherance of the conspiracy alleged above, and that no statute of limitations began to run against him at any time prior to and until June 29, 1994. **PLAINTIFF** contends his claims also are timely filed pursuant to § 16.069 of the *Texas Civil Practice & Remedies Code.* **PLAINTIFF** also contends that **DEFENDANTS** should be equitably estopped from claiming the affirmative defense of statutes of limitations due to such acts as described herein.

COUNT I
[RICO]

38. All **DEFENDANTS** are Count I **DEFENDANTS**.

39. The allegations of Paragraphs 3 through 37 are incorporated herein by reference.

40. Beginning on or before January 19, 1984, and continuing thereafter, **DEFENDANTS** entered into an agreement with **NME, PIA, NORMAN ZOBER, PETER ALEXIS** and other co-conspirators to commit the offenses of illegal remuneration for patient referrals, in violation of the Commercial Bribery Statute set forth in Section 32.43, Texas Penal Code, and use of the mail or any facility in interstate commerce to promote unlawful activity, in violation of Title 18, United States Code, Section 1952.

41. **DEFENDANTS** associated together with the conspirators referenced above, and others, to function as a continuing unit for the common purpose of committing acts of commercial bribery. The continuing unit formed by that association in fact constituted a RICO "enterprise", within the meaning of 18 U.S.C. § 1961(4) engaged in and affecting interstate commerce. More specifically, Defendants **LAWLIS, ARNOLD, PEDERSON, ZIMBUREAN, FLEISCHMANN, SECREST, GRIFFIN, WOOD, ETTER, GOFF, DPA, LAWLIS, P.A., BAKER, BAKER, P.A., ARNOLD, P.A., PEDERSON, P.A., EDLIN, P.A., ZIMBUREAN, P.A., FLEISCHMANN, P.A., SECREST, P.A., GRIFFIN, P.A., WOOD, P.A., ETTER, P.A., GOFF, P.A., LAZAR,** and **TRIMBOLI,** fiduciaries as defined in § 32.43 of the Texas Penal Code, entered into agreements to knowingly and willfully receive remuneration directly and indirectly, in cash and in kind, from **PIA** for the referral of individuals constituting beneficiaries as defined in § 32.45 of the Texas Penal Code, to **NME** owned or operated facilities. In this connection, **PLAINTIFF** alleges that each of the **NME** owned or operated psychiatric facilities by which Defendants **LAWLIS, ARNOLD, PEDERSON, ZIMBUREAN, FLEISCHMANN, SECREST, GRIFFIN, WOOD, ETTER, BAKER,** and **GOFF,** were granted medical staff privileges constitutes a RICO "enterprise" within the meaning of 18 U.S.C. § 1961(4), engaged in and affecting interstate commerce.

42. It was an integral part of the agreement between **DEFENDANTS** that Defendants **DPA, LAWLIS, ARNOLD, PEDERSON, ZIMBUREAN, FLEISCHMANN, SECREST, GRIFFIN, WOOD, ETTER, BAKER,**

and **GOFF** would receive remuneration, either directly or indirectly, from Defendants **PIA** and **BROOKHAVEN** in exchange for the referral of potential psychiatric patients to hospitals operated by Defendant **PIA**, especially **BROOKHAVEN**, and for extending the lengths of stay of such patients in violation of § 32.43 of the Texas Penal Code, knowing that such activity violated the laws of the State of Texas.

43. It was an integral part of the agreement between **DEFENDANTS** that parties to the agreement would place long distance telephone calls in interstate commerce and travel and cause others to travel in interstate commerce with the intent to promote, manage and establish and carry on this unlawful activity in violation of Section 32.43, Texas Penal Code, knowing that such unlawful activity violated the laws of the State of Texas.

44. During the existence of the agreement between **DEFENDANTS,** in order to accomplish the unlawful activities described above, the following predicate acts, among others, were knowingly committed by **DEFENDANTS:**

1. All of Defendants **ARNOLD, TRIMBOLI, LAZAR, BAKER, SECREST, PEDERSON, GRIFFIN, FLEISCHMANN, GOFF, LAWLIS, WOOD, ZIMBUREAN, ETTER,** and **DPA** entered into patient referral agreements with Defendant **NME** and/or employees, representatives or agents of **NME**, to refer potential psychiatric patients to psychiatric hospitals operated by **NME** for medical services and treatment. In return for referring patients to psychiatric hospitals, all of Defendants **ARNOLD, SECREST,**

PEDERSON, GRIFFIN, FLEISCHMANN, GOFF, LAWLIS, WOOD, ZIMBUREAN, ETTER, TRIMBOLI, LAZAR, BAKER, and **DPA** received remuneration directly and indirectly from **NME** OR **DPA** in violation of § 32.43(b) of the Texas Penal Code.

3. Defendants **ARNOLD, SECREST, PEDERSON, GRIFFIN, TRIMBOLI, LAZAR, BAKER, FLEISHMANN, GOFF, LAWLIS, WOOD, ZIMBUREAN, ETTER,** and **DPA** received payment from Defendant **NME** for office furniture and equipment, salaries of office staff, and other office expenses as remuneration for the referral of potential psychiatric patients to hospitals operated by NME. Such payments for office furniture and equipment, salaries and other office expenses were remuneration for the referral of patients by **DEFENDANTS** to **NME**'s hospitals for medical and/or psychiatric services.

4. Parties to these agreements between **DEFENDANTS** traveled in interstate commerce, used the mail, and made long distance telephone calls in interstate commerce to discuss the payment of referral sources at **NME** facilities across the United States, with the intent to promote, manage, establish, carry on, and facilitate the promotion, management, establishment and carrying on of an unlawful activity; to wit, commercial bribery in violation of Section 32.43 of the Texas Penal Code; specifically, agreeing to pay money and other benefits to fiduciaries, and

receiving money and other benefits while in a fiduciary capacity, with the understanding that the money and other benefits to fiduciaries would influence the conduct of the fiduciaries in relation to the affairs of their beneficiaries.

5. **DEFENDANTS** concealed the existence of the above described agreements with **NME** until June of 1994 and thereafter.

6. **NME** encouraged its employees to develop referral sources for patients by establishing marketing, admissions, and profit goals and objectives for Defendant **BROOKHAVEN** and other hospitals owned or operated by **NME,** and **NME** paid salaries and bonuses to employees based upon the attainment of those objectives.

7. Defendant **PIA** in concert with **ALEXIS,** among others, solicited doctors, psychologists, therapists, social workers, school counselors, probation officers and other referral sources to refer potential psychiatric patients to **BROOKHAVEN** and other hospitals owned or operated by **NME**.

8. Defendant **ARNOLD,** among others, assigned patients hospitalized at **BROOKHAVEN** to herself and Defendants **SECREST, TRIMBOLI, LAZAR, BAKER, PEDERSON, GRIFFIN, FLEISCHMANN, GOFF, LAWLIS, WOOD, ZIMBUREAN,** and **ETTER,** among others, for inpatient treatment

based upon the number of patients these Defendants referred to **BROOKHAVEN**.

9. **DPA** and **PIA** entered into an exclusive medical staff relationship regarding **BROOKHAVEN**, which resulted in significant monetary renumeration for Defendants and those affiliated with them.

10. **PIA**, in furtherance of the conspiracy alleged above, entered into professional services agreements with Defendants **ARNOLD, SECREST, BAKER, PEDERSON, GRIFFIN, FLEISCHMANN, GOFF, LAWLIS, WOOD, ZIMBUREAN**, and **ETTER**, among others, which were designed to provide these Defendants with financial inducements to refer patients to **BROOKHAVEN** and other hospitals owned or operated by **NME**.

11. **NME**, among others, entered into professional services agreements to pay Defendants **ARNOLD, SECREST, PEDERSON, GRIFFIN, FLEISCHMANN, GOFF, LAWLIS, WOOD, ZIMBUREAN**, and **ETTER**, among others, to professionally coordinate the activities of the Adolescent Psychiatric Unit at **BROOKHAVEN** in order to induce these Defendants to refer patients to these hospitals.

The unlawful activities engaged in by **DEFENDANTS** as alleged by **PLAINTIFF** herein are similar to the activities

engaged in by **DEFENDANTS** as contained in the Plaintiffs' Petitions or Complaints in Causes Nos. 4:93-CV-109-A, 342-150277-93, 17-149068-93, 96-150278-93, 96-147205-93, 141-147204-93, 153-150276-93, and the Third Amended Complaint in Cause No. 4:91-CV-038-E, each of which constitutes an act made in furtherance of the pattern of racketeering activity in which **DEFENDANTS** participated as alleged herein.

45. The predicate acts enumerated above, among others, constitute a pattern of racketeering activity by which **DEFENDANTS** directly and/or indirectly participated in the conduct of the RICO enterprise constituted by **DEFENDANTS** and Defendant **NME** and/or hospitals operated by Defendant **NME** by which **DEFENDANTS** were granted physicians privileges. Through the acts enumerated above, among others, the conduct of this enterprise by **DEFENDANTS** and others affected interstate commerce and has injured **PLAINTIFF** in her business or property in violation of 18 U.S.C. § 1961(1)(B).

46. **PLAINTIFF** was not aware that his injury was part of a pattern of racketeering activity until **PIA** pled guilty in June of 1994 to the charges of conspiracy.

47. **DEFENDANTS** have thus engaged in acts indictable under Section 32.43 of the Texas Penal Code, and 18 U.S.C. § 1952, thereby committing acts of racketeering within the meaning of 18 U.S.C. § 1961(1)(B).

48. Each of the **DEFENDANTS** engaged in or conspired in the commission of two or more of the predicate acts of commercial bribery and use of the mail or any facility in interstate commerce to promote unlawful activity described in the proceeding paragraphs in violation of

18 U.S.C. § 1962(a)-(d) within a period of 10 years, and each committed at least one such act of racketeering after the effective date of RICO (i.e., October 15, 1970). **DEFENDANTS** thus engaged in a "pattern of racketeering activity" within the meaning of 18 U.S.C. § 1961(5).

49. As a direct and proximate result of **DEFENDANTS'** violation of 18 U.S.C. S 1962, **PLAINTIFF** has suffered damages in an amount within the jurisdictional limits of this Court and has been injured in his business or property by reason of each **DEFENDANTS'** RICO violations. Pursuant to the civil remedies provision of 18 U.S.C. § 1964(c), **PLAINTIFF** is thereby entitled to recover threefold the damages he has suffered, together with his costs of suit and reasonable attorneys' fees.

ATTORNEYS' FEES

50. **PLAINTIFF** is entitled to attorneys' fees under *18 U.S.C. § 1964* or as a part of exemplary damages.

JURY DEMAND

51. **PLAINTIFF** demands trial by jury of all issues triable of right by a jury pursuant to his rights as guaranteed by the Seventh Amendment to the *Constitution of the United States of America.*

WHEREFORE, PREMISES CONSIDERED, PLAINTIFF respectfully prays that **DEFENDANTS** take nothing by their suit, and that the Court grant **PLAINTIFF** judgment against all **DEFENDANTS,** jointly and severally, for the following:

1. Actual damages in an amount in excess of the jurisdictional limits of this Court;
2. Punitive damages;
3. **PLAINTIFF's** reasonable and necessary attorneys' fees;
4. Costs of court;
5. Enhanced damages under 18 U.S.C. § 1961 et seq;
6. Prejudgment interest;
7. Post-judgment interest; and
8. Such other and further relief to which **PLAINTIFF** may show himself justly to be entitled.

Respectfully submitted,

/s/ Robert F. Andrews

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ATTORNEYS FOR PLAINTIFF

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FT. WORTH DIVISION

MARK ROTELLA,	§	
Plaintiff	§	
	§	
VS.	§	**Civil Action**
	§	**No. 4:97-CV-555-A**
ANGELA M. WOOD, M.D., ET AL.,	§	
	§	
	§	
Defendants.	§	

GROVER LAWLIS, M.D., AND GROVER LAWLIS, M.D., P.A.'S ORIGINAL ANSWER TO PLAINTIFF'S ORIGINAL COMPLAINT

TO THE HONORABLE JOHN McBRYDE, UNITED STATES DISTRICT JUDGE:

COME NOW, Defendants Grover Lawlis, M.D., and Grover Lawlis, M.D., P.A. who file this, their Answer to the Original Complaint of Plaintiff Mark Rotella, and in response thereof would respectfully show unto the Court as follows:

I.

Defendants are without knowledge or information sufficient to form a belief as to the truth of the averment contained in Paragraph 1 of Plaintiff's Original Complaint.

II.

Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in Paragraph 2 of Plaintiff's Original Complaint.

III.

With respect to Paragraph 3 of Plaintiff's Original Complaint, Defendants deny the averment that Dallas Psychiatric Associates is a general partnership at the present time. Defendants admit that Dallas Psychiatric Associates was a general partnership doing business in Dallas County at the time of the events complained of, and admit that Dallas Psychiatric Associates has been dissolved. Defendants admit the averments of Paragraph 3 which pertain to Grover Lawlis, M.D. and Grover Lawlis, M.D., P.A. Defendants have no reason to dispute the averments with respect to the remaining Defendants, but are without knowledge or information sufficient to form a belief as to the truth of those averments.

IV.

In response to the averments contained in Paragraph 4 of Plaintiff's Original Complaint, Defendants admit that Arnold, Lawlis, Baker, Trimboli, Zimburean, Goff, Griffin, Fleischmann, Pederson, Wood, Secrest and Etter were admitted to the medical or allied staff of R.H. Dedman Memorial Medical Center in Dallas, a facility owned and operated by NME Hospitals, Inc. and/or National Medical Enterprises ("NME") and/or Psychiatric Institute of

America (PIA), which includes Brookhaven. Defendants are without sufficient knowledge or information to form a belief as to the truth of whether Lazar was admitted. Defendants admit the averments of the second and third sentences, except that they deny David Baker, M.D. was a unit chief any time during Plaintiff's hospitalization. Defendants deny the averments of the fourth sentence.

V.

In response to Paragraph 5 of Plaintiff's Original Complaint, Defendants admit that Plaintiff was taken to Brookhaven in February of 1985 on an Order of Protective Custody by Dallas County Sheriffs from Parkland Hospital's Emergency room, but deny the other averments of the first sentence. Defendants are without knowledge or information sufficient to form a belief as to the averments of the second sentence. Defendants deny the averments of the third sentence, and admit the averments in the fourth sentence. Defendants deny that Plaintiff was "confined" at Brookhaven against his will. Defendants admit Plaintiff was initially diagnosed as suffering from major depression but are without knowledge or information sufficient to form a belief as to whether this diagnosis was changed. Defendants admit the averments contained in the sixth sentence, but deny the averments contained in the seventh sentence. Defendants admit Plaintiff was treated by Etter and Wood but deny Etter was Plaintiff's attending psychiatrist.

VI.

In response to Paragraph 6 of Plaintiff's Original Complaint, Defendants are without knowledge or information sufficient to form a belief as to the averments contained in the first and second sentences. Defendants deny the averments contained in the third sentence.

VII.

Defendants are without knowledge or information sufficient to form a belief as to the averments contained in Paragraph 7 of Plaintiff's Original Complaint, except that Defendants deny Plaintiff was "confined," kept under "internment," or kept in a "holding pen." Defendants also deny that Plaintiff's treatment was unnecessary and inappropriate to his medical condition.

VIII.

Defendants are without knowledge or information sufficient to form a belief as to the averments contained in Paragraph 8 of Plaintiffs Original Complaint, except that Defendants admit David Baker, M.D. was listed as the patient's admitting physician.

IX.

Defendants deny the averments contained in Paragraph 9 of Plaintiff's Original Complaint.

X.

Defendants deny the averments contained in Paragraph 10 of Plaintiff's Original Complaint.

XI.

Defendants admit that Plaintiff was placed in restraints at times, but denies all other averments contained in Paragraph 11 of Plaintiff's Original Complaint.

XII.

Defendants admit the averments contained in the first sentence of Paragraph 12 of Plaintiff's Original Complaint. Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in the second sentence of that paragraph, and deny the averments contained in the third sentence of that paragraph.

XIII.

Defendants deny the averments contained in Paragraph 13 of Plaintiff's Original Complaint.

XIV.

Defendants deny the averments contained in Paragraph 14 of Plaintiff's Original Complaint.

XV.

Defendants deny the averments contained in Paragraph 15 of Plaintiff's Original Complaint.

XVI.

Defendants deny the averments contained in the first sentence of Paragraph 16 of Plaintiff's Original Complaint. Defendants have no reason to dispute the averments contained in the second and third sentences, but are without knowledge or information sufficient to form a belief as to the truth of the averments. Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments in the fourth sentence of that paragraph. Defendants deny the averments contained in the fifth sentence of that paragraph.

XVII.

In response to Paragraph 17 of Plaintiff's Original Complaint, Defendants deny the averments contained in the first sentence, and admit the averments, contained in the second sentence. Defendants deny the averments of the third sentence. Defendants admit Plaintiff was placed on "indefinite chair" but deny the remaining averments, of Paragraph 17.

XVIII.

In response to Paragraph 18 of Plaintiff's Original Complaint, Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments in the first six sentences contained in that

Paragraph. Defendants deny the averments in the remainder of that Paragraph.

XIX.

Defendants deny the averments contained in Paragraph 19 of Plaintiff's Original Petition.

XX.

In, response to Paragraph 20 of Plaintiff's Original Complaint, Defendants have no reason to dispute the averments contained in the first or last sentence, but are without knowledge or information sufficient to form a belief as to the truth of those averments. Defendants admit the remaining averments contained in that paragraph.

XXI.

Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in the first sentence of Paragraph 21 of Plaintiff's Original Complaint. Defendants deny the remaining averments contained in that Paragraph.

XXII.

Defendants deny the averments contained in Paragraph 22 of Plaintiff's Original Complaint.

XXIII.

Defendants deny the averments contained in Paragraph 23 of Plaintiff's Original Complaint.

XXIV.

Defendants deny the averments contained in Paragraph 24 of Plaintiff's Original Complaint.

XXV.

Defendants deny the averments contained in Paragraph 25 of Plaintiff's Original Complaint.

XXVI.

Defendants have no reason to dispute the averments in Paragraph 26 of Plaintiff's Original Complaint and are without knowledge or information sufficient to form a belief as to the truth of the averments contained therein. However, Defendants deny that Plaintiff was "detained" at Brookhaven.

XXVII.

Defendant[ ] admit that benefits were collected for treatment rendered to Plaintiff, but deny the remaining averments contained in Paragraph 27 of Plaintiff's Original Complaint.

XXVIII.

Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in Paragraph 28 of Plaintiff's Original Complaint.

XXIX.

In response to Paragraph 29 of Plaintiff's Original Complaint, Defendants deny the averments of the first sentence. Defendants admit Peter Alexis pleaded guilty in Cause No. 3:94-CR-197-X. Defendants admit Plaintiff correctly quoted from the referenced factual resume. With respect to PIA, Defendants admit PIA pleaded guilty in Cause No. 94-0268. Defendants admit Plaintiff correctly quoted portions of the information submitted in connection with PIA's plea of guilty. Except as so admitted, Defendants deny the remaining allegations to the extent that they refer to these Defendants. Defendants further deny that the other portions of the information are "facts" applicable to these Defendants. The Plaintiff has included two paragraphs numbered (29). As to the second paragraph entitled Paragraph 29 of Plaintiff's Original Complaint, Defendants deny the existence of any "arrangement or conspiracy" between or among them and any other party or entity, and deny the remaining averments if they are references to these Defendants.

XXXI.

In response to Paragraph 30 of Plaintiff's Original Complaint, Defendants deny the averments contained therein.

XXXII.

In response to Paragraph 31 of Plaintiff's Original Complaint, Defendants deny the averments contained in the first sentence, but admit the averments in the second, third, fourth, and fifth sentences. Defendants deny the remaining averments in Paragraph 31 of Plaintiff's Original Complaint.

XXXIII.

In response to Paragraph 32 of Plaintiff's Original Complaint, Defendants admit the averments of the first and second sentences. Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining averments of Paragraph 32, given that those averments constitute a conclusion on the part of the Plaintiff.

XXXIV.

In response to Paragraph 33 of Plaintiff's Original Complaint, Defendants deny the averments, contained in Paragraph 33, but with respect to the second sentence, Defendants admit that the referenced "chairperson" was a sub-committee of a Dedman committee.

XXXV.

Defendants deny the averments contained in Paragraph 34 of Plaintiff's Original Complaint.

XXXVI.

Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in Paragraph 35 of Plaintiff's Original Complaint.

XXXVII.

Defendants deny the averments contained in Paragraph 36 of Plaintiff's Original Complaint.

XXXVIII.

In response to Paragraph 37 of Plaintiff's Original Complaint, Defendants admit the averments of the first sentence. Defendants deny the remaining averments set forth in that paragraph.

XXXIX.

Paragraph 38 of Plaintiff's Original Complaint requires no Answer.

XL.

Paragraph 39 of Plaintiff's Original Complaint requires no Answer.

XLI.

Defendants deny the averments contained in Paragraph 40 of Plaintiff's Original Complaint.

XLII.

Defendants deny the averments contained in Paragraph 41 of Plaintiff's Original Complaint.

XLIII.

Defendants deny the averments contained in Paragraph 42 of Plaintiff's Original Complaint.

XLIV.

Defendants deny the averments contained in Paragraph 43 of Plaintiff's Original Complaint.

XLV.

Defendants deny the averments contained in Paragraph 44 of Plaintiff's Original Complaint.

XLVI.

Defendants deny the averments contained in Paragraph 45 of Plaintiff's Original Complaint.

XLVII.

Defendants deny the averments contained in Paragraph 46 of Plaintiff's Original Complaint.

XLVIII.

Defendants deny the averments contained in Paragraph 47 of Plaintiff's Original Complaint.

XLIX.

Defendants deny the averments contained in Paragraph 48 of Plaintiff's Original Complaint.

L.

Defendants deny the averments contained in Paragraph 49 of Plaintiff's Original Complaint.

LI.

Defendants deny the averments contained in Paragraph 50 of Plaintiff's Original Complaint.

LII.

In response to Paragraph 51 of Plaintiff's Original Complaint, Defendants admit that Plaintiff is entitled to a trial by jury on all issues, if any, which remain in the case at the time of trial, and which are triable by right. Defendants deny that the Plaintiff will be entitled to trial issues. Further, Defendants deny Plaintiff is entitled to any of the relief requested.

LIII.

Pursuant to Rule 8(b) of the Federal Rules of Civil Procedure, Defendants generally deny all of the averments contained in Plaintiff's Original Complaint, except such designated averments or paragraphs as these Defendants have previously admitted, and to the extent that Defendants have not previously expressly denied any such matters contained in Plaintiff's Original Complaint.

LIV.

Pleading affirmatively, if same be necessary, Defendants would show that Plaintiff's claims are barred by all applicable statutes of limitations.

LV.

Answering further, if same be necessary, Defendants would show that any injuries, damages or liabilities complained of by the Plaintiff herein are the result in whole or in part of a pre-existing condition and disabilities, and are not the result of any act or omission on the part of these Defendants.

LVI.

In the unlikely event the jury should award punitive damages, any assessment of punitive damages should be limited by the safeguards guaranteed by the Fifth, Sixth, Eighth, and Fourteenth Amendments of the United States Constitution.

LVII.

Further, in the unlikely event the jury should award damages against Defendants, they specifically assert their right of contribution pursuant to ch. 33, Texas Civil Practice & Remedies Code.

LVIII.

Further, Defendants would show Plaintiff consented to his hospitalization at all times.

LVIV.

Defendants respectfully demand a trial by jury on any issue triable of right by a jury.

WHEREFORE, PREMISES CONSIDERED, Defendants pray that upon trial hereof, Plaintiff take nothing, that Defendants go hence without day and recover their costs, and for such other and further relief both at law and in equity, to which they may show themselves justly entitled to receive.

Respectfully submitted,

BY: /s/ Alan L. Campbell
ALAN L. CAMPBELL
State Bar No. 03692700
WENDY A. McMILLON
State Bar No. 00790100

COWLES & THOMPSON, P.C.
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(214) 672-2000
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ATTORNEYS FOR DEFENDANTS GROVER LAWLIS, M.D., AND GROVER LAWLIS, M.D., P.A.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing instrument was forwarded to attorney for Plaintiff, Mr. Robert F. Andrews, 2909 Bank One Tower, 500 Throckmorton Street, Fort Worth, Texas 76102, via certified mail, return receipt requested, and to all other counsel via regular mail on this the 4th day of September, 1997.

/s/ Wendy A. McMillon
WENDY A. McMILLON

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

MARK ROTELLA,	§	
	§	
PLAINTIFF	§	
	§	
VS.	§	NO.: 4:97-CV-555-A
	§	
ANGELA M. WOOD, M.D., ET AL.,	§	(Filed Sep. 8, 1997)
	§	
	§	
DEFENDANTS.	§	

DEFENDANTS LARRIE W. ARNOLD, M.D., FRED L. GRIFFIN, M.D., LESLIE H. SECREST, M.D., JOHN M. ZIMBUREAN, M.D., BRADFORD M. GOFF, M.D., RONALD FLEISCHMANN, M.D., WILLIAM M. PEDERSON, M.D., DALLAS PSYCHIATRIC ASSOCIATES, LARRIE W. ARNOLD, M.D.P.A., FRED L. GRIFFIN, M.D., P.A., LESLIE H. SECREST, M.D., P.A., JOHN M. ZIMBUREAN, M.D., P.A., BRADFORD M. GOFF, M.D.P.A., RONALD FLEISCHMANN, M.D.P.A., WILLIAM M. PEDERSON, M.D., P.A.'S, ANSWER TO PLAINTIFF'S ORIGINAL COMPLAINT

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

Defendants Larrie W. Arnold, M.D., Fred L. Griffin, M.D., Leslie H. Secrest, M.D., John M. Zimburean, M.D., Bradford M. Goff, M.D., Ronald Fleischmann, M.D., William M. Pederson, M.D., Dallas Psychiatric Associates, Larrie W. Arnold, M.D., P.A., Leslie H. Secrest, M.D., P.A., William M. Pederson, M.D., P.A., Fred L. Griffin, M.D., P.A., Ronald Fleischmann, M.D., P.A., Bradford M. Goff,

M.D., P.A., John M. Zimburean, M.D., P.A. (collectively referred to as "DPA Defendants"), file this their answer to the original complaint of Mark Rotella ("Rotella"). The following answers are numbered identically to the corresponding paragraphs of Rotella's original complaint.

1. In answer to paragraph I of Rotella's complaint, the DPA Defendants admit the averments of paragraph 1.

2. Paragraph 2 of Rotella's complaint requires no answer.

3. In answer to paragraph 3 of Rotella's complaint, the DPA Defendants deny that Dallas Psychiatric Associates is a general partnership at the present time. The DPA Defendants admit that Dallas Psychiatric Associates was a general partnership doing business in Dallas County at the time of the events complained of. With regard to the third sentence of paragraph 3, DPA Defendants deny that Baker and Baker, P.A. were employees and/or agents of DPA at all times material to this complaint. DPA Defendants deny the averments that particular Defendants were "agents" for other Defendants contained in sentences three through five as calling for a legal conclusion. The DPA Defendants deny the averments of the sixth sentence. DPA Defendants deny the averments that particular defendants were "agents" for other defendants contained in sentences seven through sixteen as calling for a legal conclusion. The DPA Defendants admit the remaining averments of paragraph 3, except that David R. Baker, M.D., P.A. was a partner of DPA only from January 2, 1980 until April 1, 1985.

4. In answer to paragraph 4 of Rotella's complaint, the DPA Defendants admit that Arnold, Lawlis, Baker,

Trimboli, Zimburean, Goff, Griffin, Fleischmann, Pederson, Wood, Secrest and Etter were admitted to the medical or allied staff of R. H. Dedman Memorial Medical Center in Dallas, a facility owned and operated by NME Hospitals, Inc. and/or National Medical Enterprises ("NME") and/or Psychiatric Institute of America ("PIA"), which includes Brookhaven. The DPA Defendants are without knowledge or information sufficient to form a belief as to truth of whether Lazar was so admitted. The DPA Defendants admit the averments of the second sentence. With regard to the third sentence, DPA Defendants admit only that the identified defendants served as unit directors for various units of Brookhaven at various times, but deny the sentence as written and, specifically, deny that David Baker, M.D. was a unit chief at any time during Rotella's hospitalization. The DPA Defendants deny the averments of the fourth sentence.

5. In answer to paragraph 5 of Rotella's complaint, the DPA Defendants admit only that Rotella was brought to Brookhaven on an Order of Protective Custody, but deny the remaining averments of the first sentence as written. With respect to the second sentence, the DPA Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments of the second sentence. The DPA Defendants deny the averments of the third sentence. The DPA Defendants admit the averments of the fourth sentence. The DPA Defendants admit that Rotella was initially diagnosed as suffering from major depression, but are without knowledge or information sufficient to form a belief as to whether this diagnosis was ever changed. The DPA Defendants admit the averments, of the sixth sentence. The DPA Defendants

deny the averments of the seventh sentence. With regard to the eighth sentence, DPA Defendants admit only that Etter initially acted as Rotella's administrative psychiatrist, but later transferred that responsibility to Wood.

6. In answer to paragraph 6 of Rotella's complaint, the DPA Defendants deny that at the time of his admission to Brookhaven, Rotella had no problems requiring court-ordered commitment or in-patient treatment in a psychiatric hospital, but admit that is what Rotella is claiming now. With regard to the second sentence, the DPA Defendants deny that Rotella could effectively have been treated as an out-patient, but admit that is what Rotella is contending now. The DPA Defendants deny the remaining averments of paragraph 6.

7. In answer to paragraph 7 of Rotella's complaint, DPA Defendants admit only that when Rotella was admitted to Brookhaven on Order of Protective Custody, he was hospitalized on Unit B of the hospital for approximately seventeen days. With regard to the second sentence, DPA Defendants admit only that Rotella waived his right to contest commitment and applied for voluntary admission to Brookhaven, but deny the remaining averments of the second sentence. DPA Defendants deny that Rotella was "confined" but admit the remaining averments of the third sentence. The DPA Defendant[ ] deny the remaining averments of paragraph 7.

8. In answer to paragraph 8 of Rotella's complaint, the DPA Defendants admit Rotella was admitted to Brookhaven by David Baker, M.D., then as David Baker, M.D., P.A., a former partner of DPA, but deny the remaining averments of the first sentence. The DPA Defendants

admit the averments of the second sentence. The DPA Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining averments of paragraph 8.

9. In answer to paragraph 9 of Rotella's complaint, the DPA Defendants deny the averments contained in paragraph 9.

10. In answer to paragraph 10 of Rotella's complaint, the DPA Defendants deny the averments contained in paragraph 10.

11. In answer to paragraph 11 of Rotella's complaint, the DPA Defendants admit only that Rotella was placed in restraints by order of Defendant Wood, but deny the averments as written. The DPA Defendants deny the averments of the second sentence.

12. In answer to paragraph 12 of Rotella's complaint, the DPA Defendants admit the averments of the first sentence. The DPA Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments of the second sentence. The DPA Defendants deny the remaining averments of paragraph 12.

13. In answer to paragraph 13 of Rotella's complaint, the DPA Defendants admit that patients sometimes attended group therapy while in restraints, but are without knowledge or information sufficient at this time to form a belief as to whether Rotella attended group therapy while in restraints. Answering further, DPA Defendants deny the remaining averments contained in paragraph 13.

14. In answer to paragraph 14 of Rotella's complaint, the DPA Defendants deny the averments of paragraph 14.

15. In answer to paragraph 15 of Rotella's complaint, the DPA Defendants deny the averments of paragraph 15.

16. In answer to paragraph 16 of Rotella's complaint, the DPA Defendants admit that Rotella was placed on restrictions, but deny that any restrictions were not medically necessary. The DPA Defendants deny the remaining averments of paragraph 16.

17. In answer to paragraph 17 of Rotella's complaint, the DPA Defendants deny the averments of the first sentence. The DPA Defendants admit the averments of the second sentence. The DPA Defendants deny the averments of the third sentence. The DPA Defendants admit that Rotella was placed on "indefinite chair" for portions of his stay at Brookhaven, but deny the remaining averments of paragraph 17.

18. In answer to paragraph 18 of Rotella's complaint, the DPA Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments concerning Dr. Winter's testimony in the first, second, third, fourth, fifth and six sentences of paragraph 18. The DPA Defendants deny the remaining averments of paragraph 18.

19. In answer to paragraph 19 of Rotella's complaint, the DPA Defendants deny the averments of paragraph 19.

20. In answer to paragraph 20 of Rotella's complaint, the DPA Defendants admit the averments contained in paragraph 20.

21. In answer to paragraph 21 of Rotella's complaint, the DPA Defendants are without knowledge or information sufficient to form a belief as to truth of the averments of the first sentence. The DPA Defendants deny the remaining averments of paragraph 21.

22. In answer to paragraph 22 of Rotella's complaint, the DPA Defendants deny the averments of paragraph 22.

23. In answer to paragraph 23 of Rotella's complaint, the DPA Defendants deny the averments of paragraph 23.

24. In answer to paragraph 24 of Rotella's complaint, the DPA Defendants deny the averments of paragraph 24.

25. In answer to paragraph 25 of Rotella's complaint, the DPA Defendants deny the averments of paragraph 25.

26. In answer to paragraph 26 of Rotella's complaint, the DPA Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 26, but admit that either Rotella's parents or their insurance carriers were charged for treatment during his stay at Brookhaven.

27. In answer to paragraph 27 of Rotella's complaint, the DPA Defendants admit that the DPA Defendants collected benefits for treatment rendered Rotella, but deny the remaining averments of paragraph 27.

28. In answer to paragraph 28 of Rotella's complaint, the DPA Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 28.

29. In answer to paragraph 29 of Rotella's complaint, the DPA Defendants deny the averments of the first sentence. The DPA Defendants admit Peter Alexis ("Alexis") pled guilty in cause No. 3:94-CR-197-X. The DPA Defendants admit Rotella correctly quoted from the referenced factual resume. With regard to PIA, the DPA Defendants admit that PIA pled guilty in cause No. 94-0268. The DPA Defendants admit that Rotella correctly quoted portions of the information submitted in connection with PIA's plea of guilty. Except as so admitted, the DPA Defendants deny the remaining averments to the extent they refer to the DPA Defendants. The DPA Defendants further deny that the other portions of the information are "facts" applicable to the DPA Defendants.

29. In answer to "paragraph 29" [sic] of Rotella's complaint, the DPA Defendants deny the existence of any "arrangement or conspiracy" between or among them and any other party or entity, and deny the remaining averments, if they are references to these defendants.

30. In answer to paragraph 30 of Rotella's complaint, the DPA Defendants deny any illegal contract was entered into between any DPA Defendant and Brookhaven, NME Hospitals, NME, or PIA, and deny little or no performance was expected of DPA physicians. DPA Defendants deny the remaining averments of paragraph 30.

31. In answer to paragraph 31 of Rotella's complaint, the DPA Defendants deny the averments contained in the first sentence. The DPA Defendants admit the averments contained in the second, third, fourth and fifth sentences. The DPA Defendants deny the remaining allegations of paragraph 31.

32. In answer to paragraph 32 of Rotella's complaint, the DPA Defendants admit the averments of the first and second sentences. The DPA Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining averments of paragraph 32, because the averments constitute a conclusion on the part of Rotella.

33. In answer to paragraph 33 of Rotella's complaint, the DPA Defendants deny the averments of the first sentence. With respect to the second sentence, the DPA Defendants deny the averments of the second sentence, but admit that the referenced "chairperson" was a sub-committee of a Dedman committee.

34. In answer to paragraph 34 of Rotella's complaint, the DPA Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 34.

35. In answer to paragraph 35 of Rotella's complaint, the DPA Defendants deny the averments of paragraph 35.

36. In answer to paragraph 36 of Rotella's complaint, the DPA Defendants deny the averments of paragraph 36.

37. In answer to paragraph 37 of Rotella's complaint, the DPA Defendants admit the averments of the first sentence. The DPA Defendants deny the remaining averments of paragraph 37.

38. Paragraph 38 of Rotella's complaint requires no answer.

39. Paragraph 39 of Rotella's complaint requires no answer.

40. In answer to paragraph 40 of Rotella's complaint, the DPA Defendants deny the averments contained in paragraph 40.

41. In answer to paragraph 41 of Rotella's complaint, the DPA Defendants deny the averments contained in paragraph 41.

42. In answer to paragraph 42 of Rotella's complaint, the DPA Defendants deny the averments contained in paragraph 42.

43. In answer to paragraph 43 of Rotella's complaint, the DPA Defendants deny the averments of paragraph 43.

44. In answer to paragraph 44 of Rotella's complaint, the DPA Defendants deny the averments of paragraph 44.

45. In answer to paragraph 45 of Rotella's complaint, the DPA Defendants deny the averments of paragraph 45.

46. In answer to paragraph 46 of Rotella's complaint, the DPA Defendants deny the averments of paragraph 46.

47. In answer to paragraph 47 of Rotella's complaint, the DPA Defendants deny the averments of paragraph 47.

48. In answer to paragraph 48 of Rotella's complaint, the DPA Defendants deny the averments of paragraph 48.

49. In answer to paragraph 49 of Rotella's complaint, the DPA Defendants deny the averments of paragraph 49.

50. In answer to paragraph 50 of Rotella's complaint, the DPA Defendants deny the averments of paragraph 50.

JURY DEMAND

51. In answer to paragraph 51 of Rotella's complaint, the DPA Defendants admit that Rotella is entitled to trial by jury on all issues, if any, which remain in the case at time of trial, which are triable by right. The DPA Defendants deny that Rotella will be entitled to trial issues. Further, the DPA Defendants deny Rotella is entitled to any of the relief requested.

DEFENSES

52. The DPA Defendants would show that Rotella's discharge date and the last date of treatment by any of the DPA Defendants was June 16, 1986. Rotella's date of birth was May 18, 1968. Therefore, the DPA Defendants assert the applicable statute of limitations as a defense to every cause of action alleged by Rotella.

53. The DPA Defendants further state that in the unlikely event the jury should award punitive damages, any assessment of punitive damages should be limited by the safeguards guaranteed by the Fifth, Six, Eighth and Fourteenth Amendments of the United States Constitution.

54. The DPA Defendants further state that in the unlikely event the jury should award damages against these defendants, they specifically assert their right of contribution pursuant to ch. 33, Texas Civil Practice & Remedies Code.

55. DPA Defendants further state that Rotella suffers from a mental and/or physical condition not resulting from the occurrence in question or not resulting from any act or omission on the part of these Defendants.

56. The DPA Defendants would further show that Rotella consented to his hospitalization both when he executed the voluntary admission form and later when he withdrew his 96-hour letters.

57. The DPA Defendants would show that the injuries and damages of which Rotella complains were not caused by any act or omission on the part of any of these defendants.

58. The DPA Defendants would show that the injuries, damages or liabilities of which Rotella complains, if any exist, are the result, in whole or in part, of pre-existing conditions and/or disability and are not the result of any act or omission on the part of any of these defendant[ ].

59. DPA Defendants also assert all affirmative defenses set forth in the Texas Health and Safety Code, Subtitle A, Texas Department of Mental Health and Mental Retardation, Chapter 531, *et. seq.*, including, but not limited to, Chapter 571, subsection .019.

60. DPA Defendants would further show that National Medical Enterprises, Inc., Psychiatric Institutes of America, Inc. and NME Hospitals, Inc. d/b/a Brookhaven Psychiatric Pavilion entered into a settlement with Rotella, whereby Rotella released National Medical Enterprises, Inc., Psychiatric Institutes of America, Inc. and NME Hospitals, Inc. d/b/a Brookhaven Psychiatric Pavilion from all liability arising out of the occurrence made the basis of Rotella's claim against the Defendants. Accordingly, if Rotella is awarded any amount as damages in this cause, the award must be reduced by the dollar amount of the settlement described above.

61. DPA Defendants will further show that National Medical Enterprises, Inc., Psychiatric Institutes of America, Inc. and NME Hospitals, Inc. d/b/a Brookhaven Psychiatric Pavilion are entities that have settled with Rotella as alleged in the preceding paragraph, and would have been liable to Rotella for all or part of his alleged damages, but for such settlement. In this connection, these Defendants will show that the alleged injuries and/or damages complained of by Rotella were caused by the activities of National Medical Enterprises, Inc., Psychiatric Institutes of America, Inc. and NME Hospitals, Inc. d/b/a Brookhaven Psychiatric Pavilion, or alternatively, such activity was a contributing proximate cause. Accordingly, these Defendants are entitled to and do elect to

reduce any liability which they may owe to Rotella by the dollar amount of this settlement.

JURY DEMAND

62. The DPA Defendants respectfully demand a trial by jury on any issue triable of right by a jury.

PRAYER

Wherefore, premises considered, the DPA Defendants pray that upon final hearing, Rotella take nothing by his claims; that the DPA Defendants have their cost on their behalf expended; and that the DPA Defendants have such other and further relief to which they may show themselves justly entitled.

Respectfully submitted,

/s/ Tom Renfro
Tom Renfro
State Bar I.D. No. 16776000
Joseph F. Cleveland, Jr.
State Bar I.D. No. 04378900

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ATTORNEYS FOR
DPA DEFENDANTS

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was forwarded by First Class mail to opposing counsel:

Robert F. Andrews
Andrews & Cirkiel
2909 Bank One Tower
500 Throckmorton
Fort Worth, Texas 76102

Dated this, 8 day of September, 1997.

/s/ Tom Renfro
Tom Renfro

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

MARK ROTELLA	§	
	§	
PLAINTIFF,	§	
	§	
V.	§	NO.: 4:97-CV-555-A
	§	
ANGELA M. WOOD, M.D.,	§	JURY DEMANDED
ET AL.,	§	
	§	(Filed Sep. 8, 1997)
DEFENDANTS.	§	

DEFENDANTS WOOD AND ETTER'S ANSWER TO PLAINTIFF'S ORIGINAL COMPLAINT

Defendants Angela M. Wood, M.D., Angela M. Wood, M.D., P.A., Gary Lee Etter, M.D. and Gary Lee Etter, M.D., P.A. (collectively referred to as "Defendants Wood and Etter"), file this answer to the original complaint of Mark Rotella ("Rotella"). The following answers are numbered identically to the corresponding paragraphs of Rotella's original complaint.

FIRST DEFENSE

Initially pleading, by way of this complaint, Rotella has failed to state a claim upon which relief can be granted.

ANSWER

1. In answer to paragraph 1 of Rotella's complaint, Defendants Wood and Etter admit the averments contained in this paragraph.

2. Paragraph 2 of Rotella's complaint requires no answer.

3. In answer to the first sentence of paragraph 3 of Rotella's complaint, Defendants Wood and Etter deny that Dallas Psychiatric Associates ("DPA") is a general partnership at the present time. Defendants Wood and Etter admit that DPA was a general partnership doing business in Dallas County at all times material to Rotella's complaint. With regard to the third sentence of paragraph 3, Defendants Wood and Etter deny that Baker and Baker, P.A. were employees and/or agents off DPA at all times material to this complaint. Defendants Wood and Etter deny the averments that particular Deffendants were "agents" for other Defendants contained in sentences three through five as calling for a legal conclusion. Defendants Wood and Etter deny the avermentts of the sixth sentence. Defendants Wood and Etter deny tthe averments that particular Defendants were "agents" ffor other Defendants contained in sentences seven through sixteen as calling for a legal conclusion. Defendants Wood and Etter admit the remaining averments of paraggraph 3, except that David R. Baker, M.D., P.A., was a partner of DPA only from January 2, 1980 until April 1, 1985.

4. In answer to paragraph 4 of Rotella's complaint, Defendants Wood and Etter admit that Arnold,, Lawlis, Trimboli, Zimburean, Goff, Griffin, Fleischmann, Pederson, Wood, Secrest and Etter were admitted to the medical or allied staff of R.H. Dedman Memorial Medical Center in Dallas, a facility owned and operated by NME Hospitals, Inc. and/or National Medical Entterprises ("NME") and/or Psychiatric Institute of America ("PIA"), which includes Brookhaven. Defendants Wood and Etter

are without knowledge or information sufficient to form a belief as to the truth of whether Lazar and Baker were so admitted. Defendants Wood and Etter admit the averments of the second sentence. With regard to the third sentence, Defendants Wood and Etter admit only that the identified Defendants served as unit directors for various units of Brookhaven at various times, but deny the sentence as written and, specifically, deny that David Baker, M.D. was a unit chief at any time during Rotella's hospitalization. Defendants Wood and Etter deny the remaining averments of the fourth sentence as calling for a legal conclusion.

5. In answer to paragraph 5 of Rotella's complaint, Defendants Wood and Etter admit only that Rotella was brought to Brookhaven on an Order of Protective Custody, but deny the remaining averments of the first sentence as written. With respect to the second sentence, Defendants Wood and Etter are without knowledge or information sufficient to form a belief as to truth of the averments of this sentence. Defendants Wood and Etter are without knowledge or information sufficient to form a belief as to the truth of the first phrase of the third sentence, but deny the remaining averments of this sentence. Defendants Wood and Etter admit the averments of the fourth sentence. With regard to the fifth sentence, Defendants Wood and Etter admit only that Rotella was initially diagnosed as suffering from a major depressive disorder by history, which diagnosis was later supplemented to include an Axis II diagnosis of personality disorder, borderline type with narcissistic features. Defendants Wood and Etter admit the averments of the

sixth sentence. Defendants Wood and Etter deny the averments of the seventh sentence. With regard to the eighth sentence, Defendants Wood and Etter admit only that Etter initially acted as Rotella's administrative psychiatrist, but later transferred that responsibility to Wood.

6. In answer to the first sentence of paragraph 6 of Rotella's complaint, Defendants Wood and Etter deny that at the time of Rotella's admission to Brookhaven, Rotella had no problems requiring court-ordered commitment or in-patient treatment in a psychiatric hospital, but admit that is what Rotella claims through this lawsuit. With regard to the second sentence, Defendants Wood and Etter deny that Rotella could effectively have been treated on an out-patient basis, but admit that is what Rotella is now contending. Defendants Wood and Etter deny the remaining averments of paragraph 6.

7. In answer to the first sentence of paragraph 7 of Rotella's complaint, Defendants Wood and Etter admit only that when Rotella was admitted to Brookhaven on Order of Protective Custody, he was hospitalized on Unit B of the hospital for approximately seventeen days. With regard to the second sentence, Defendants Wood and Etter admit only that Rotella waived his right to contest commitment and applied for voluntary admission to Brookhaven, but deny the remaining averments of the second sentence. Defendants Wood and Etter deny that Rotella was "confined" but admit the remaining averments of the third sentence. Defendants Wood and Etter deny the remaining averments of paragraph 7.

8. In answer to the first sentence of paragraph 8 of Rotella's complaint, Defendants Wood and Etter admit

that at the time of Rotella's admission, David Baker, M.D., P.A. was a partner of DPA, but deny the remaining averments of that sentence. Defendants Wood and Etter admit the averments of the second sentence. Defendants Wood and Etter are without knowledge or information sufficient to form a belief as to the truth of the remaining averments; of paragraph 8.

9. In answer to paragraph 9 of Rotella's complaint, Defendants Wood and Etter are without knowledge or information sufficient to form a belief as to whether Rotella has properly quoted Joint Commission on the Accreditation of Hospitals (JCAH) standards in subparagraphs a. through f., and deny the averments contained in paragraph 9.

10. In answer to paragraph 10 of Rotella's complaint, Defendants Wood and Etter deny the averments contained in paragraph 10.

11. In answer to the first sentence of paragraph 11 of Rotella's complaint, Defendants Wood and Etter admit only that Rotella was placed in restraints by order of Defendant Wood, but deny the averments as written. Defendants Wood and Etter deny the averments contained in the second sentence.

12. In answer to the first sentence of paragraph 12 of Rotella's complaint, Defendants Wood and Etter admit only that Rotella was in restraints for a period of time during his third and fifth weeks of hospitalization, but deny the averments as written. Defendants Wood and Etter deny the averments contained in the second sentence, including the footnote. Defendants Wood and Etter deny the remaining averments of paragraph 12.

13. In answer to paragraph 13 of Rotella's complaint, Defendants Wood and Etter admit that patients sometimes attended group therapy while in restraints, but are without knowledge or information sufficient at this time to form a belief as to whether Rotella attended group therapy while in restraints. Answering further, Defendants Wood and Etter deny the remaining averments contained in paragraph 13.

14. In answer to paragraph 14 of Rotella's complaint, Defendants Wood and Etter deny the averments contained in the first sentence. With regard to the second sentence, Defendants Wood and Etter admit that patients were required to remain in restraints while engaged in various activities, such as eating and attending to personal hygiene, but are without knowledge or information sufficient at this time to form a belief as to whether Rotella engaged in all of the activities outlined while in restraints.

15. In answer to paragraph 15 of Rotella's complaint, Defendants Wood and Etter are without knowledge or information sufficient to form a belief as to whether Rotella has properly quoted JCAH standards in subparagraphs a. through i., and deny the averments contained in paragraph 15.

16. In answer to paragraph 16 of Rotella's complaint, Defendants Wood and Etter admit that Rotella was placed on restrictions, but deny that restrictions were not medically appropriate and/or necessary. Defendants Wood and Etter deny the remaining averments contained in paragraph 16.

17. In answer to paragraph 17 of Rotella's complaint, Defendants Wood and Etter deny the averments of the first sentence. With regard to the second sentence, Defendants Wood and Etter admit only that Rotella was required to sit chair. Defendants Wood and Etter deny the averments of the third sentence. Defendants Wood and Etter admit that Rotella was placed on "indefinite chair" at various times during his hospitalization at Brookhaven, but deny the remaining averments of the fourth sentence.

18. In answer to paragraph 18 of Rotella's complaint, Defendants Wood and Etter are without knowledge or information sufficient to form a belief as to the truth of the averments concerning Dr. Winter's testimony in the first, second, third and fourth sentences of paragraph 18. Defendants Wood and Etter deny the remaining averments of paragraph 18.

19. In answer to paragraph 19 of Rotella's complaint, Defendants Wood and Etter deny the averments contained in paragraph 19.

20. In answer to paragraph 20 of Rotella's complaint, Defendants Wood and Etter admit only that during Rotella's hospitalization at Brookhaven, he executed five 96-hour letters requesting discharge, as alleged in the first sentence. Defendants Wood and Etter admit the averments in the second sentence, except for the footnote, which they deny as written. Defendants Wood and Etter further admit the averments in the third and fourth sentences.

21. In answer to paragraph 21 of Rotella's complaint, while Defendants Wood and Etter believe the

averments of the first sentence to be untrue, they are without knowledge or information sufficient to form a belief as to the truth of averments due to lack of adequate reference to specific facts. Defendants Wood and Etter deny the remaining averments contained in paragraph 21.

22. In answer to paragraph 22 of Rotella's complaint, Defendants Wood and Etter deny the averments contained in paragraph 22.

23. In answer to paragraph 23 of Rotella's complaint, Defendants Wood and Etter are without knowledge or information sufficient to form a belief as to whether Rotella has properly quoted JCAH standards, but deny the averments contained in paragraph 23.

24. In answer to paragraph 24 of Rotella's complaint, Defendants Wood and Etter deny the averments contained in paragraph 24.

25. In answer to paragraph 25 of Rotella's complaint, Defendants Wood and Etter admit that Trimboli provided or supervised psychological testing conducted at Brookhaven and that Lazar acted as Rotella's individual therapist, but deny the remaining averments contained in paragraph 25.

26. In answer to paragraph 26 of Rotella's complaint, Defendants Wood and Etter admit that either Rotella's parents or their insurance carriers were billed for treatment rendered during his hospitalization at Brookhaven, but deny the remaining averments of paragraph 26.

27. In answer to paragraph 27 of Rotella's complaint, Defendants Wood and Etter admit that DPA collected benefits for treatment rendered Rotella, but deny the remaining averments contained in paragraph 27.

28. In answer to paragraph 28 of Rotella's complaint, Defendants Wood and Etter deny that they took personal items from Rotella without returning them to him, but are without knowledge or information sufficient to form a belief as to the truth of the remainder of the averments contained paragraph 28.

29. In answer to paragraph 29 of Rotella's complaint, Defendants Wood and Etter deny the averments contained in the first sentence. With regard to the second sentence, Defendants Wood and Etter admit that Psychiatric Institutes of America, Inc. ("PIA") and Peter Alexis ("Alexis") pled guilty to federal charges. With regard to the third sentence, Defendants Wood and Etter admit that PIA pled guilty in Case No. 94-0268, in the United States District Court for the District of Columbia. With regard to the fourth and fifth sentences, the Information speaks for itself, but appears to be properly quoted by Rotella. However, Defendants Wood and Etter deny that these are "facts" applicable to these Defendants. Defendants Wood and Etter admit the sixth sentence. With regard to the seventh sentence, the Factual Resume speaks for itself, but appears to be properly quoted. However, Defendants Wood and Etter deny that these are "facts" applicable to these Defendants. Except as so admitted, Defendants Wood and Etter deny the remaining averments in paragraph 29 to the extent these averments refer to Defendants Wood and Etter.

29. In answer to "paragraph 29" [sic] of Rotella's complaint, Defendants Wood and Etter deny the existence of any "arrangement or conspiracy" between or among them and any other party or entity, and deny the remaining averments to the extent that they are references to these Defendants.

30. In answer to paragraph 30 of Rotella's complaint, Defendants Wood and Etter deny the averments contained in paragraph 30.

31. In answer to paragraph 31 of Rotella's complaint, Defendants Wood and Etter admit only that DPA and PIA entered into a Services Agreement effective March 15, 1990, but deny the remaining averments contained in the first sentence. Defendants Wood and Etter admit the averments contained in the second, third, fourth and fifth sentences. Defendants Wood and Etter deny the remaining allegations contained in paragraph 31.

32. In answer to paragraph 32 of Rotella's complaint, Defendants Wood and Etter admit the averments of the first and second sentences. Defendants Wood and Etter are without knowledge or information sufficient to form a belief as to the truth of the remaining averments of paragraph 32.

33. In answer to paragraph 33 of Rotella's complaint, Defendants Wood and Etter deny the averments of the first sentence. With respect to the second sentence, Defendants Wood and Etter admit that the referenced "Patient-Care Monitoring Committee" was a subcommittee of a R.H. Dedman committee, but are without knowledge or information sufficient at this time to form a belief

as to the truth of Defendant Arnold's relationship to that committee and deny the remaining averments.

34. In answer to paragraph 34 of Rotella's complaint, Defendants Wood and Etter are without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 34, but deny they denied Rotella access to the referenced information.

35. In answer to paragraph 35 of Rotella's complaint, Defendants Wood and Etter deny the averments contained in paragraph 35.

36. In answer to paragraph 36 of Rotella's complaint, Defendants Wood and Etter deny the averments contained in paragraph 36.

37. In answer to paragraph 37 of Rotella's complaint, Defendants Wood and Etter admit the averments of the first sentence, admit that Rotella was hospitalized as alleged in the fifth sentence, and admit that PIA pled guilty as alleged in the thirteenth sentence. Defendants are without knowledge or information sufficient to form a belief as to the truth of the sixth, tenth, eleventh and twelfth sentences. With regard to the twelfth sentence, however, Defendants Wood and Etter deny they were engaged in the alleged activity. Defendants Wood and Etter deny the remaining averments contained in paragraph 37, many of which are legal conclusions.

38. Paragraph 38 of Rotella's complaint requires no answer.

39. In answer to paragraph 39, Defendants Wood and Etter incorporate their answer to paragraphs 3 through 31.

40. In answer to paragraph 40 of Rotella's complaint, Defendants Wood and Etter deny the averments contained in paragraph 40.

41. In answer to paragraph 41 of Rotella's complaint, Defendants Wood and Etter deny the averments contained in paragraph 41.

42. In answer to paragraph 42 of Rotella's complaint, Defendants Wood and Etter deny the averments contained in paragraph 42.

43. In answer to paragraph 43 of Rotella's complaint, Defendants Wood and Etter deny the averments contained in paragraph 43.

44. In answer to paragraph 44 of Rotella's complaint, Defendants Wood and Etter deny the averments contained in paragraph 44.

45. In answer to paragraph 45 of Rotella's complaint, Defendants Wood and Etter deny the averments contained in paragraph 45.

46. In answer to paragraph 46 of Rotella's complaint, Defendants Wood and Etter deny the averments contained in paragraph 46.

47. In answer to paragraph 47 of Rotella's complaint, Defendants Wood and Etter deny the averments contained in paragraph 47.

48. In answer to paragraph 48 of Rotella's complaint, Defendants Wood and Etter deny the averments contained in paragraph 48.

49. In answer to paragraph 49 of Rotella's complaint, Defendants Wood and Etter deny the averments contained in paragraph 49.

50. In answer to paragraph 50 of Rotella's complaint, Defendants Wood and Etter deny the averments contained in paragraph 50.

51. In answer to paragraph 51 of Rotella's complaint, Defendants Wood and Etter admit that Rotella is entitled to trial by jury on all issues, if any, which remain in the case at time of trial, which are triable by right. Defendants Wood and Etter deny that Rotella will be entitled to trial issues. Further, Defendants Wood and Etter deny Rotella is entitled to any of the relief requested.

SECOND DEFENSE

52. Defendants Wood and Etter would show that Rotella's discharge date and the last date of treatment by either Defendant Wood or Etter was June 16, 1986. Rotella's date of birth was May 18, 1968. Therefore, Defendants Wood and Etter assert the applicable statue [sic] of limitations as a defense to every cause of action alleged by Rotella.

THIRD DEFENSE

53. Defendants Wood and Etter further state that, in the unlikely event the jury should award punitive damages, any assessment of punitive damages should be limited by the safeguards guaranteed by the Fifth, Six [sic],

Eighth and Fourteenth Amendments of the United States Constitution.

FOURTH DEFENSE

54. Defendants Wood and Etter further state that, in the unlikely event the jury should award damages against them, they specifically assert their right of contribution pursuant to Chapter 33 of the Texas Civil Practice & Remedies Code.

FIFTH DEFENSE

55. Defendants Wood and Etter further state that Rotella suffers from a mental and/or physical condition not resulting from the occurrence in question or not resulting from any act or omission on the part of these Defendants.

SIXTH DEFENSE

56. Defendants Wood and Etter would further show that Rotella consented to his hospitalization, both when he executed the voluntary admission form and later when he withdrew his 96-hour letters.

SEVENTH DEFENSE

57. Defendants Wood and Etter would also show that the injuries and damages of which Rotella complains were not caused by any act or omission on the part of either of them.

EIGHTH DEFENSE

58. Defendants Wood and Etter would also show that the injuries, damages or liabilities of which Rotella complains, if any exist, are the result, in whole or in part, of preexisting conditions and/or disabilities and are not the result of any act or omission on the part of either of them.

NINTH DEFENSE

59. Defendants Wood and Etter also assert each and every affirmative defense set forth in the Texas Health and Safety Code, Subtitle A, Texas Department of Mental Health and Mental Retardation, Chapter 531, *et seq.*, including, but not limited to, Chapter 571, subsection .019.

TENTH DEFENSE

60. Defendants Wood and Etter would further show that National Medical Enterprises, Inc., Psychiatric Institutes of America, Inc. and NME Hospitals, Inc. d/b/a Brookhaven Psychiatric Pavilion entered into a settlement with Rotella, whereby Rotella released National Medical Enterprises, Inc., Psychiatric Institutes of America, Inc. and NME Hospitals, Inc. d/b/a Brookhaven Psychiatric Pavilion from all liability arising out of the occurrence made the basis of Rotella's claim against the Defendants. Accordingly, if Rotella is awarded any amount as damages in this cause, the award must be reduced by the dollar amount of the settlement described above.

ELEVENTH DEFENSE

61. Defendants Wood and Etter will further show that National Medical Enterprises, Inc., Psychiatric Institutes of America, Inc. and NME Hospitals, Inc. d/b/a Brookhaven Psychiatric Pavilion are entities that have settled with Rotella as alleged in the preceding paragraph, and would have been liable to Rotella for all or part of his alleged damages, but for such settlement. In this connection, these Defendants will show that the alleged injuries and/or damages complained of by Rotella were caused by the activities of National Medical Enterprises, Inc., Psychiatric Institutes of America, Inc. and NME Hospitals, Inc. d/b/a Brookhaven Psychiatric Pavilion, or alternatively, such activity was a contributing proximate cause. Accordingly, these Defendants are entitled to and do elect to reduce any liability which they may owe to Rotella by the dollar amount of this settlement.

JURY DEMAND

62. Defendants Wood and Etter respectfully demand a trial by jury on any issue triable of right by a jury.

PRAYER

FOR THESE REASONS, Defendants Wood and Etter pray that upon final hearing, Rotella take nothing by his claims; that Defendants Wood and Etter have their costs; and that Defendants Wood and Etter have such other and

further relief, at law or in equity, to which they may show themselves justly entitled.

Respectfully submitted,

/s/ John H. Martin
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was forwarded by First Class mail to opposing counsel:

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Robert F. Andrews, P.C.
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Ft. Worth, TX 76102

Dated this 8th day of September, 1997.

/s/ Adrienne E. Dominguez
Adrienne E. Dominguez

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

MARK ROTELLA	§	
	§	**Civil Action No.**
V.	§	**4:97-CV-555-A**
WILLIAM M. PEDERSON, M.D., et al	§	**(Filed Sep. 5, 1997)**
	§	

LAWLIS DEFENDANTS' MOTION FOR SUMMARY JUDGMENT AND BRIEF IN SUPPORT

TO THE HONORABLE JOHN MCBRYDE, UNITED STATES DISTRICT JUDGE:

COMES NOW, Defendants Grover Lawlis, M.D., and Grover Lawlis, M.D., P.A. (collectively referred to as "Lawlis Defendants" or "Defendants"), pursuant to Fed. R. Civ. P. 56 and Local Rule 5.2(a), file this their Motion for Summary Judgment and brief in support, and in support thereof would respectfully show the Court as follows:

I.
PROCEDURAL HISTORY

1. On November 29, 1994, Mark Rotella ("Rotella") filed his first lawsuit in state court against Defendants and others alleging violations of his civil rights and asserting various tort claims. The state court granted Defendants' summary judgment motion on limitations on all state law claims. Thereafter, the case was removed to federal court. Over two years after initiating his claims and after various motions for summary judgment had

been filed and in certain instances granted, Rotella sought leave of this Court to amend his complaint to add a new federal claim under the Racketeering Influence and Corrupt Organizations Act ("RICO"), 28 U.S.C. §§ 1961-1968 (1984). On May 15, 1997, this Court denied Rotella's motion for leave to file his second amended complaint containing his RICO allegations against the Defendants.[1] Shortly thereafter, this Court granted Defendants' summary judgment motion on the civil rights claims again based on limitations. Apparently not satisfied with the Court's ruling on his RICO allegation, Rotella instituted a second lawsuit against the Defendants alleging RICO violations in order to circumvent this Court's prior ruling. Rotella's complaint should be dismissed. Contemporaneously with the filing of this motion, Defendants filed answer in which they denied all liability and asserted the affirmative defense of limitations.

II.
ISSUES OF LAW IN WHICH SUMMARY JUDGMENT IS REQUESTED

2. Defendants dispute Rotella's allegations that they are liable under any theory asserted in this case. For purposes of this motion, however, the Defendants request the Court to grant summary judgment on the following issue:

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[1] Pursuant to Fed. R. Evid. 201, DPA Defendants request this Court take judicial notice of the district court records in Cause No. 4:07-CV-211-A, styled "Rotella v. Pederson."

a. Defendants are entitled to judgment as a matter of law on their affirmative defense that Rotella's claims are barred by the statute of limitations.

UNDISPUTED FACTS

3. Pursuant to Local Rule 5.2(a), the Defendants submit the following list of undisputed facts:

a. Rotella was born on May 18, 1968 (Complaint ¶ 37).

b. On May 18, 1996, Rotella turned eighteen (18) years of age (Complaint ¶ 37).

c. On June 16, 1986, Rotella was discharged from Brookhaven (Complaint ¶ 5).

d. On July 9, 1997, Rotella filed a lawsuit against the Defendants asserting violations of RICO (*See* Complaint).

IV.

ROTELLA'S RICO CLAIM IS BARRED BY THE STATUTE OF LIMITATIONS

4. Rotella's RICO claim is based on allegations that the Defendants misrepresented his condition and the care, services and treatment he received while a patient at Brookhaven. Rotella claims he was damaged as a result of his admission to Brookhaven and having to remain there until his discharge. Rotella, however, discovered or could have discovered his alleged injuries during and after his treatment at Brookhaven. Because Rotella failed to file suit until over ten (10) years after his discharge, his RICO claim is barred as a matter of law.

5. Rotella's RICO claim is governed by a four-year limitations. *Agency Holding Corp. v. Malley-Duff & Assoc.*, 483 U.S. 143, 156 (1987). Although the Fifth Circuit has not expressly determined the appropriate time of accrual for a RICO claim, the United States Supreme Court has made clear that the "last predicate act" theory adopted by the Third Circuit in *Keystone Ins. Co. v. Haughton*, 863 F.2d 1125, 1130 (3rd Cir. 1988) is not a proper interpretation of the law. *Klehr v. A. O. Smith Corp.*, 1997 WL 331794 (U.S.)[2]

6. In *Schwertz v. Zimburean*, No. 4:95-CV-370-A, slip op. at 14-17 (N.D. Tex. June 25, 1996), *aff'd*, No. 96-11155 (5th Cir. July 7, 1997) (per curiam), *rehearing denied*, (August 14, 1997), this Court adopted the majority rule which tied the accrual of a plaintiff's RICO claim to the time he knew or should have known of his injury. This Court's decision was affirmed on appeal after the *Klehr* decision was rendered by the Supreme Court. Because Rotella knew or should have known of his injury within four years before filing suit, Rotella's civil RICO claims are barred by limitations as a matter of law.

V.

PLAINTIFF'S PLEADINGS DO NOT SUPPORT A RICO CLAIM

In order to state a claim actionable under 18 U.S.C. § 1964, which creates a private cause of action for

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[2] In *Klehr*, the Supreme Court did not determine what accrual test would be appropriate, it only determined that the test applied by the 3rd Circuit was incorrect.

violations of the Racketeer Influenced and Corrupt Organizations Act hereinafter "RICO"), Plaintiffs must establish predicate acts violative of RICO and that Defendant engaged in a pattern of racketeering activity connected with the acquisition, establishment, conduct, or control of an enterprise. *Delta Truck & Tractor, Inc. v. J.I. Case Company*, 855 F.2d 241, 242 (5th Cir. 1988), *cert. denied*, 489 U.S. 1079, 109 S.Ct. 1531, 103 L.Ed. 2d 836 (1989). The Defendant who has received income from a pattern of racketeering cannot invest that income in an enterprise, cannot acquire or maintain an interest in an enterprise through a pattern of racketeering, cannot conduct that enterprise's affairs through a pattern of racketeering, and cannot conspire to violate RICO in one of the three manners set forth above. *In Re: Burzynski*, 989 F.2d 733, 741 (5th Cir. 1993). If these events occur, a private RICO action may exist. In order to allege a proper private RICO action, Plaintiffs must allege with specificity each element of his claim that RICO was violated, along with the predicate acts of racketeering. *Farlow v. Peat, Marwick, Mitchell & Co.*, 956 F.2d 982, 989 (10th Cir. 1992). Failure to do so requires dismissal of the claim. *Farlow*, 956 F.2d at 990; *Frymire v. Peat, Marwick, Mitchell & Co.*, 657 F.Supp. 889, 895, 896 (N.D. Ill. 1989).

A. No Actionable RICO Violation

Plaintiff's Original Complaint fails to make any allegation that these Defendants violated RICO by receipt and investment of racketeering income, by maintaining an interest in their enterprise through racketeering, by using racketeering to conduct enterprise's affairs or by

conspiring to do any of these things. Further, Plaintiff's Original Complaint fails to establish that Plaintiff's alleged injuries were proximately caused by one of these violations by Defendants. As such, dismissal of Plaintiff's RICO claims is appropriate. *Sedima S.P.R.L. v. Imrex Co., Inc.*, 473 U.S. 479, 105 S.Ct. 3275, 3284, 87 L.Ed. 2d 346 (1985); *In Re: Burzynski*, 989 F.2d at 741.

Moreover, based upon Plaintiff's allegations against these Defendants, as set forth in his Original Complaint in this case, Plaintiff would be unable to establish that his injuries were proximately caused by these Defendants' alleged violation of RICO through receipt and investment of racketeering income, by maintaining an interest in their enterprise through racketeering, by using racketeering to conduct enterprise's affairs, or by conspiring to do any of these things. The alleged wrongdoing by Defendants against Plaintiff, which forms the basis of Plaintiff's claims against these Defendants are in no way based upon the alleged predicate acts contained in his Original Complaint, wherein he alleges these Defendants' violations of RICO.

Plaintiff's RICO claims are based upon predicate acts and unlawful activity which all center upon improper remuneration to these Defendants for referral of patients to NME Hospitals for medical and/or psychiatric services. (Plaintiff's Original Complaint, pp. 31-33, para. 44). Plaintiff's allegations of mistreatment or improper care, and resulting injury, however, are not based on any issue of improper remuneration. Generally, Plaintiff's complaints against these Defendants deal with an unusually restrictive environment, improper use of restraints, an

improper length of stay, a failure to implement a treatment plan, and the fact that medical treatment was improper and/or inadequate. (Plaintiff's Original Complaint, p. 12, para. 16; pp. 9-12, paras. 11-15; p. 8, para. 10; p. 15, para. 19; and p. 17, para. 24).

Moreover, Plaintiff's specific counts against these Defendants also establish that Plaintiff's alleged injuries were not proximately caused by the alleged RICO predicate acts in this matter, but were caused by other conduct not related to any referral of Plaintiff to Brookhaven for treatment. As set forth in the Plaintiff's Original Complaint, his claims deal with the allegation that he was detained against his will during his stay at Brookhaven. (Plaintiff's Original Complaint, pp. 5-6, para. 5).

As set forth above, Plaintiff's RICO allegations against these Defendants center on an alleged inappropriate system of compensation to Defendants for their referral of patients to Brookhaven. As set forth above, in order to have standing under RICO, Plaintiff must show that his injuries were proximately caused by Defendants' RICO predicate acts. *Sedima*, 473 U.S. at 495; 105 S. Ct. at 324; *Moler v. Zaccaria*, 831 F. Supp. 1046, 1053 S.D. N.Y. 1993). Review of Plaintiff's Original Complaint reveals that Defendants' alleged RICO predicate action violations are not the basis of his alleged injuries in this matter. In fact, at no place in Plaintiff's Original Complaint, does the Plaintiff allege that there was an improper referral of Plaintiff to Brookhaven and/or that Plaintiff's stay at Brookhaven was specifically the result of and/or a consequence of the alleged conspiracy between all Defendants to receive improper remuneration for referral of patients to Brookhaven. As such, Plaintiff has failed to fulfill the

pleading obligation placed on him by the Federal Rules of Civil Procedure and has failed to establish, as required, that Defendants violated RICO in the manners required, and that Plaintiff's injuries were proximately caused by Defendants' RICO violations. As such, dismissal of Plaintiff's RICO claim is appropriate. *Sedima*, 473 U.S. at 495; 105 S. Ct. at 3284; *In Re: Burzynski*, 989 F.2d at 741.

B. Plaintiff Does Not Have Standing For A Private RICO Claim

1. Plaintiff's Claim Is For Personal Injuries

In addition to failing to plead appropriate facts upon which a claim that Defendants violated RICO could be based, Plaintiff has also failed to plead facts to show that he has proper standing to bring a civil RICO claim against these Defendants pursuant to 18 U.S.C. § 1964. In order to have appropriate standing to prosecute a private RICO action, Plaintiff has to plead appropriate facts with respect to his injuries and the cause of those injuries. Personal injuries are not compensable under RICO. *Oscar v. University Students Co-Op Association*, 965 F.2d 783, 785 (9th Cir, 1992), *cert. den'd*, ___ U.S. ___, 113 S. Ct. 655, 121 L.Ed. 2d 581 (1992). The damages allegations contained in the various counts of Plaintiff's Original Complaint clearly claim damages which are of the personal injury variety. (Plaintiff's Original Complaint, pp. 5-6, para. 5; pp. 9-10, para. 11; p. 10, para. 12; p. 10, para. 13; pp. 10-11, para. 14; pp. 12-13, para 16, p. 13, para 17). Based on this alone, Defendant would submit that Plaintiff does not have appropriate standing to bring a private RICO

cause of action, since Plaintiff's entire Complaint is merely a claim for personal injuries.

2. Plaintiff Was Not Injured In Business Or Property

Aside from the type of compensable injuries, Plaintiff only has standing to sue and recover under a private RICO claim if he has been injured in his business or property by the conduct which constitutes the RICO violation in question. *Bass v. Campagnone*, 838 F.2d 10, 11 (1st Cir. 1988). Moreover, the alleged injury to an individual's business or property must result from the alleged RICO predicate acts. *Shearin v. E.F. Hutton Group, Inc.*, 855 F.2d 1162 (3rd Cir. 1989); *Burdick v. American Express Company*, 865 F.2d 527 (2nd Cir. 1989); *Cullom v. Hibernia National Bank*, 859 F.2d 1211 (5th Cir. 1988). Plaintiff has failed to make any type of specific allegation as to how or what injury to his business or property resulted from the alleged RICO predicate acts. As set forth above, Plaintiff's injuries in this matter, based upon the allegations contained in his Original Complaint were not the result of inappropriate referral or compensation for inappropriate referral, which is the basis of Plaintiff's RICO allegations against these Defendants. Moreover, the damage allegations contained in Plaintiff's Original Complaint are clearly all damages of the personal injury variety. Courts have previously held that Plaintiff's cannot recover damages under RICO for losses that are most properly understood as part of a personal injury claim, even if they are of a pecuniary nature. *Grogan v. Platt*, 835 F.2d 844, 848 (11th Cir. 1988). Clearly, to the extent that Plaintiff has

alleged any pecuniary losses in this case, they are losses which are certainly part of a personal injury claim and, therefore, cannot be recovered under RICO. *Grogan*, 835 F.2d at 848.

Specifically, while Plaintiff has plead loss of medical expenses, Plaintiff's pleadings do not support that this could be a basis on which the court could find that he has been injured in his business or property by a potential violation of RICO. These are clearly pecuniary damages that are part of a personal injury claim under Texas law. Under the Texas Pattern Jury Charge for healthcare liability personal injury claims, medical expenses is an element of recoverable damages. Tex. P.J.C., § 80.02B (Vol. 3, December, 1994). Therefore, medical expenses are not recoverable under RICO. *Grogan*, 835 F.2d at 848. Thus, Plaintiff's RICO claim should be dismissed since Plaintiff's Original Complaint does not sufficiently allege a basis on which standing could be conferred to allow Plaintiff's to bring a private RICO claim, since there is no basis for any alleged injury to his business or property.

For the reasons stated, the Defendants respectfully request that their motion for summary judgment be granted, that judgment be entered, that Rotella take nothing in his suit, and that they be granted such other and

further leave, both at law and in equity, to which they may show themselves to be justly entitled.

Respectfully submitted,

By: /s/ Wendy A. McMillon
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was forwarded to all counsel of record, via the method shown, as follows:

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DATED this 4th day of September, 1997.

/s/ Wendy A. McMillon
WENDY A. McMILLON

EXHIBIT "B"

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

MARK ROTELLA Plaintiff	§	
V.	§	CIVIL ACTION NO. 4-97-CV-555-Y
ANGELA M. WOOD, M.D., ET AL., Defendants	§	

DECLARATION OF FRED L. GRIFFIN, M.D.

1. "My full name is Fred L. Griffin, M.D. I am over the age of eighteen (18) years, I have not been convicted of a crime, and I am not in any way disqualified from making this declaration. I have personal knowledge of the facts stated in this declaration based on my personal involvement in the events described.

2. "1 received my Bachelor of Science Degree in 1970 from Southwestern University. I received my Medical Doctorate Degree from the University of Texas Southwestern Medical School at Dallas in 1974. I successfully completed my residency at Timberlawn Psychiatric Hospital in Dallas, Texas in 1977.

3. "I am currently licensed to practice medicine in the State of Texas. During the time MARK ROTELLA ("Rotella") was hospitalized at Brookhaven Psychiatric Pavillion, I was licensed to practice medicine in the State of Texas. I am

the 100% shareholder of Fred L. Griffin, M.D., P.A.

4. "At no time after June 16, 1986, was I in any way involved in any care or treatment of Rotella.

5. "On July 9, 1997, Rotella filed the present lawsuit against me individually and my professional association in Cause No. 4-97-CV-555-Y, styled "Mark Rotella v. Angela M. Wood, M.D., et al." in the United States District Court for the Northern District of Texas, Fort Worth Division."

I declare under penalty of perjury that the foregoing is true and correct.

Executed on the 27th day of August, 1997.

/s/ Fred L. Griffin, M.D.
Fred L. Griffin, M.D.

EXHIBIT "C"

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

MARK ROTELLA Plaintiff	§	
V.	§	CIVIL ACTION NO. 4-97-CV-555-Y
ANGELA M. WOOD, M.D., ET AL., Defendants	§	

DECLARATION OF LESLIE H. SECREST, M.D.

1. "My full name is Leslie H. Secrest, M.D. I am over the age of eighteen (18) years, I have not been convicted of a crime, and I am not in any way disqualified from making this declaration. I have personal knowledge of the facts stated in this declaration based on my personal involvement in the events described.

2. "I received my Bachelor of Science Degree in 1964 from Wheaton College. I received my Medical Doctorate Degree from the University of Texas Southwestern Medical School at Dallas in 1968. I successfully completed my residency at the University of Texas Southwestern Medical School at Dallas in 1974.

3. "I am currently licensed to practice medicine in the State of Texas. During the time MARK ROTELLA ("Rotella") was hospitalized at Brookhaven Psychiatric Pavillion, I was licensed to practice medicine in the State of Texas. I am

the 100% shareholder of Leslie H. Secrest, M.D., P.A.

4. "At no time after June 16, 1986, was I in any way involved in any care or treatment of Rotella.

5. "On July 9, 1997, Rotella filed the present lawsuit against me individually and my professional association in Cause No. 4-97-CV-555-Y, styled "Mark Rotella v. Angela M. Wood, M.D., et al." in the United States District Court for the Northern District of Texas, Fort Worth Division."

I declare under penalty of perjury that the foregoing is true and correct.

Executed on the 21 day of August, 1997.

/s/ Leslie H. Secrest, M.D.
Leslie H. Secrest, M.D.

EXHIBIT "D"

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

MARK ROTELLA Plaintiff	§	
V.	§	CIVIL ACTION
ANGELA M. WOOD, M.D., ET AL.,	§	NO. 4-97-CV-555-Y
Defendants	§	

DECLARATION OF JOHN M. ZIMBUREAN, M.D.

1. "My full name is John M. Zimburean, M.D. I am over the age of eighteen (18) years, I have not been convicted of a crime, and I am not in any way disqualified from making this declaration. I have personal knowledge of the facts stated in this declaration based on my personal involvement in the events described.

2. "I received my Bachelor of Arts Degree in 1976 from the University of Texas. I received my Medical Doctorate Degree from the University of Texas Southwestern Medical Center in 1981. I successfully completed my residency at Southwestern Medical School in 1985. I am board certified by the American Board of Psychiatry and Neurology.

3. "I am currently licensed to practice medicine in the State of Texas. During the time MARK ROTELLA ("Rotella") was hospitalized at Brookhaven Psychiatric Pavillion, I was licensed to practice medicine in the State of Texas. I am

the 100% shareholder of John M. Zimburean, M.D., P.A.

4. "At no time after June 16, 1986, was I in any way involved in any care or treatment of Rotella.

5. "On July 9, 1997, Rotella filed the present lawsuit against me individually and my professional association in Cause No. 4-97-CV-555-Y, styled "Mark Rotella v. Angela M. Wood, M.D., et al." in the United States District Court for the Northern District of Texas, Fort Worth Division."

I declare under penalty of perjury that the foregoing is true and correct.

Executed on the 28th day of August, 1997.

/s/ John M. Zimburean, M.D.
John M. Zimburean, M.D.

EXHIBIT "E"

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

MARK ROTELLA Plaintiff	§	
V.	§	CIVIL ACTION
ANGELA M. WOOD, M.D., ET AL.,	§	NO. 4-97-CV-555-Y
Defendants	§	

DECLARATION OF BRADFORD GOFF, M.D.

1. "My full name is Bradford Goff, M.D. I am over the age of eighteen (18) years, I have not been convicted of a crime, and I am not in any way disqualified from making this declaration. I have personal knowledge of the facts stated in this declaration based on my personal involvement in the events described.

2. "I received my Bachelor of Science Degree in 1973 from the University of Massachussetts [sic] at Amherst. I received my Medical Doctorate Degree from the State University of New York Downstate Medical Center in 1977. I successfully completed my residency at the Timberlawn Psychiatric Hospital in Dallas, Texas in 1981. I am board certified by the American Board of Psychiatry and Neurology.

3. "I am currently licensed to practice medicine in the State of Texas. During the time MARK ROTELLA ("Rotella") was hospitalized at Brookhaven Psychiatric Pavillion, I was licensed

to practice medicine in the State of Texas. I am the 100% shareholder of Bradford Goff, M.D., P.A.

4. "At no time after June 16, 1986, was I in any way involved in any care or treatment of Rotella.

5. "On July 9, 1997, Rotella filed the present lawsuit against me individually and my professional association in Cause No. 4-97-CV-555-Y, styled "Mark Rotella v. Angela M. Wood, M.D., et al." in the United States District Court for the Northern District of Texas, Fort Worth Division."

I declare under penalty of perjury that the foregoing is true and correct.

Executed on the 23 day of August, 1997.

/s/ Bradford Goff
Bradford Goff, M.D.

EXHIBIT "F"

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

MARK ROTELLA Plaintiff	§ § §	
V.	§	CIVIL ACTION
ANGELA M. WOOD, M.D., ET AL.,	§ §	NO. 4-97-CV-555-Y
Defendants	§ §	

DECLARATION OF RONALD FLEISCHMANN, M.D.

1. "My full name is Ronald Fleischmann, M.D. I am over the age of eighteen (18) years, I have not been convicted of a crime, and I am not in any way disqualified from making this declaration. I have personal knowledge of the facts stated in this declaration based on my personal involvement in the events described.

2. "1 received my Medical Doctorate Degree from New York Medical College in 1969. I successfully completed my residency at Rutgers Mental Health Center in New Jersey in 1975.

3. "I am currently licensed to practice medicine in the State of Texas. During the time MARK ROTELLA ("Rotella") was hospitalized at Brookhaven Psychiatric Pavillion, I was licensed to practice medicine in the State of Texas. I am the 100% shareholder of Ronald Fleischmann, M.D., P.A.

4. "At no time after June 16, 1986, was I in any way involved in any care or treatment of Rotella.

5. "On July 9, 1997, Rotella filed the present lawsuit against me individually and my professional association in Cause No. 4-97-CV-555-Y, styled "Mark Rotella v. Angela M. Wood, M.D., et al." in the United States District Court for the Northern District of Texas, Fort Worth Division."

I declare under penalty of perjury that the foregoing is true and correct.

Executed on the 20th day of August, 1997.

/s/ Ronald Fleischmann, M.D.
Ronald Fleischmann, M.D.

EXHIBIT "G"

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

MARK ROTELLA Plaintiff	§	
V.	§	CIVIL ACTION NO. 4-97-CV-555-Y
ANGELA M. WOOD, M.D., ET AL., Defendants	§	

DECLARATION OF WILLIAM M. PEDERSON, M.D.

1. "My full name is William M. Pederson, M.D. I am over the age of eighteen (18) years, I have not been convicted of a crime, and I am not in any way disqualified from making this declaration. I have personal knowledge of the facts stated in this declaration based on my personal involvement in the events described.

2. "1 received my Bachelor of Science Degree in 1962 from Texas A & M University. I received my Medical Doctorate Degree from the University of Texas Southwestern Medical School at Dallas in 1966. I successfully completed my residency at the University of Michigan in 1971.

3. "I am currently licensed to practice medicine in the State of Texas. During the time MARK ROTELLA ("Rotella") was hospitalized at Brookhaven Psychiatric Pavillion, I was licensed to practice medicine in the State of Texas. I am the 100% shareholder of William M. Pederson, M.D., P.A.

4. "At no time after June 16, 1986, was I in any way involved in any care or treatment of Rotella.

5. "On July 9, 1997, Rotella filed the present lawsuit against me individually and my professional association in Cause No. 4-97-CV-555-Y, styled "Mark Rotella v. Angela M. Wood, M.D., et al." in the United States District Court for the Northern District of Texas, Fort Worth Division."

I declare under penalty of perjury that the foregoing is true and correct.

Executed on the 20th day of August, 1997.

/s/ William M. Pederson, M.D.
William M. Pederson, M.D.

EXHIBIT "H"

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

MARK ROTELLA Plaintiff	§ § §	
V.	§	CIVIL ACTION
ANGELA M. WOOD, M.D., ET AL.,	§ §	NO. 4-97-CV-555-Y
Defendants	§ §	

DECLARATION OF DAVID R. BAKER, M.D.

1. "My full name is David R. Baker, M.D. I am over the age of eighteen (18) years, I have not been convicted of a crime, and I am not in any way disqualified from making this declaration. I have personal knowledge of the facts stated in this declaration based on my personal involvement in the events described.

2. "I received my Bachelor of Science Degree from the University of Texas at Austin. I received my Medical Doctorate Degree from the University of Texas Southwestern Medical School at Dallas in 1966.

3. "I am currently licensed to practice medicine in the State of Texas. During the time MARK ROTELLA ("Rotella") was hospitalized at Brookhaven Psychiatric Pavillion, I was licensed to practice medicine in the State of Texas. I am the 100% shareholder of David R. Baker, M.D., P.A.

4. I was a partner in Dallas Psychiatric Associates from at least January 2, 1980 until April 1, 1985.

5. "At no time after June 16, 1986, was I in any way involved in any care or treatment of Rotella.

6. "On July 9, 1997, Rotella filed the present lawsuit against me individually and my professional association in Cause No. 4-97-CV-555-Y, styled "Mark Rotella v. Angela M. Wood, M.D., et al." in the United States District Court for the Northern District of Texas, Fort Worth Division."

I declare under penalty of perjury that the foregoing is true and correct.

Executed on the 3rd day of Sept., 1997.

/s/ David R. Baker, M.D.
David R. Baker, [DRB] M.D.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

Mark Rotella,	§	
	§	
Plaintiff,	§	
	§	
v.	§	NO.: 4:97-CV-555-A
	§	
Angela M. Wood, M.D., et al.,	§	
	§	
	§	
Defendants.		

DECLARATION OF ANGELA M. WOOD, M.D.

1. My full name is Angela M. Wood, M.D. I am over the age of eighteen (18) years, I have not been convicted of a crime, and I am not in anyway disqualified from making this declaration. I have personal knowledge of the facts stated in this declaration based on my involvement in the events described.

2. I was licensed to practice medicine in the State of Louisiana in 1976 and in the State of Texas in 1981. I was certified in Psychiatry by the American Board of Psychiatry and Neurology in January, 1984. A true and correct copy of my most recent curriculum vitae is attached hereto as Exhibit "A" and is incorporated herein for all purposes.

3. At the time Mark Rotella ("Rotella") was hospitalized at Brookhaven Psychiatric Pavilion, I was licensed to practice medicine in the State of Texas.

4. I was not involved in any care or treatment of Rotella after June 16, 1986.

5. Rotella filed the present lawsuit against me individually and my professional association in Cause No. 4-97-CV-555-Y, styled *Mark Rotella v. Angela M. Wood, M.D., et al.* in the United States District Court for the Northern District of Texas, Fort Worth Division, on July 9, 1997.

6. I am the sole shareholder and own one hundred percent (100%) of Angela M. Wood, M.D., P.A.

I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED ON THIS the 5th day of September, 1997.

/s/ Angela M. Wood, M.D.
Angela M. Wood, M.D.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

Mark Rotella, Plaintiff, v. Angela M. Wood, M.D., et al., Defendants.	§ § § § § § § §	NO.: 4:97-CV-555-A

DECLARATION OF GARY LEE ETTER, M.D.

1. My full name is Gary Lee Etter, M.D. I am over the age of eighteen (18) years, I have not been convicted of a crime, and I am not in anyway disqualified from making this declaration. I have personal knowledge of the facts stated in this declaration based on my involvement in the events described.

2. I received my M.D. from the University of Texas Medical Branch at Galveston in 1980. I have been licensed to practice medicine in the State of Texas since 1980. I was Board Certified in Psychiatry by the American Academy of Psychiatry and Neurology in 1988. A true and correct copy of my most recent curriculum vitae is attached hereto as Exhibit "A".

3. At the time Mark Rotella ("Rotella") was hospitalized at Brookhaven Psychiatric Pavilion, I was licensed to practice medicine in the State of Texas.

4. I was not involved in any care or treatment of Rotella after June 16, 1986.

5. Rotella filed the present lawsuit against me individually and my professional association in Cause No. 4-97-CV-555-Y, styled *Mark Rotella v. Angela M. Wood, M.D., et al.* in the United States District Court for the Northern District of Texas, Fort Worth Division, on July 9, 1997.

6. I am the sole shareholder and own one hundred percent (100%) of Gary Lee Etter, M.D., P.A.

I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED ON THIS the 5 day of September, 1997.

/s/ Gary Lee Etter M.D.
Gary Lee Etter, M.D.

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

MARK ROTELLA,	§	
	§	
VS.	§	
	§	
ANGELA M. WOOD, M.D.,	§	
GARY LEE ETTER, M.D.,	§	
WILLIAM M. PEDERSON, M.D.,	§	NO: 4:97-CV-555-A
GROVER LAWLIS, M.D.,	§	
DAVID R. BAKER, M.D.,	§	
LARRIE W. ARNOLD, M.D.,	§	
FRED L. GRIFFIN, M.D.,	§	
LESLIE H. SECREST, M.D.,	§	(Filed Oct. 3, 1997)
JOHN M. ZIMBUREAN, M.D.,	§	
BRADFORD M. GOFF, M.D.,	§	
RONALD FLEISCHMANN,	§	
M.D., DALLAS PSYCHIATRIC	§	
ASSOCIATES, DAVID R.	§	
BAKER, M.D., P.A., LARRIE W.	§	
ARNOLD, M.D., P.A., LESLIE H.	§	
SECREST, M.D., P.A., WILLIAM	§	
M. PEDERSON, M.D., P.A.,	§	
FRED L. GRIFFIN, M.D., P.A.,	§	
RONALD FLEISCHMANN,	§	
M.D., P.A., BRADFORD M.	§	
GOFF, M.D., P.A., GROVER	§	
LAWLIS, M.D., P.A., ANGELA	§	
M. WOOD, M.D., P.A., JOHN	§	
M. ZIMBUREAN, M.D., P.A.,	§	
GARY LEE ETTER, M.D.,	§	
FRANK TRIMBOLI, M.D.,	§	
MYRON S. LAZAR, Ph.D.,	§	

PLAINTIFF MARK ROTELLA'S RESPONSE TO MOTIONS FOR SUMMARY JUDGMENT OF DEFENDANTS LAWLIS, WOOD, ETTER AND DPA

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Plaintiff Mark Rotella and files this his Response to the Motions for Summary Judgment of the **DPA** Defendants, Defendants **Wood & Etter,** and the **Lawlis** Defendants.

I.

The Motions for Summary Judgment filed herein by the Defendants are virtually identical in content, except that additional material appears in the **LAWLIS** Defendants' Motion. However, the additional arguments made in the **LAWLIS** Motion for Summary Judgment are superfluous as the **LAWLIS** Defendants indicate that

> "for purposes of this motion, however, the Defendants request the Court to grant summary judgment on the following issue:
>
> > "a. Defendants are entitled to judgment as a matter of law on their affirmative defense that Rotella's claims are barred by the statute of limitations." Lawlis Defendants' Motion at p. 2.

Consequently, the superfluous material in the **LAWLIS** Defendants' Motion safely may be disregarded by the Court, as the **LAWLIS** Defendants' obligations under Rule 56 have been met only with respect to the limitations issue at this juncture. *Anderson v. Liberty Lobby, Inc.*, 477

U.S. 242, 256 (1986); *Celotex Corp. v. Catrett*, 477 U.S. 317, 323-325 (1986).

II.

DISPUTED ISSUES OF LAW

1. Whether Plaintiff Mark Rotella's RICO claim accrued more than four (4) years earlier than the date on which he filed this lawsuit.

2. Whether a cause of action under RICO accrues when a person has knowledge of his injury, its causation, and that it has been caused as a part of a pattern of racketeering activity or whether knowledge of the pattern of racketeering activity is not required for a RICO claim to accrue.

III.

DISPUTED ISSUES OF FACT

1. Plaintiff Mark Rotella did not know and should not have known that the injuries of which he complains in this lawsuit resulted from a pattern of racketeering activity prior to the time he learned of the criminal conviction of Brookhaven's parent company, Psychiatric Institutes of America, in July of 1994, a date which is less than four (4) years prior to the date upon which this lawsuit was filed, July 9, 1997.

2. Plaintiff agrees that the facts set forth in Paragraph III.3 A-D in the **LAWLIS** Defendants' Motion for Summary Judgment are undisputed.

3. Plaintiff agrees that the facts set forth in Paragraph III.3 A-H of the **WOOD** and **ETTER** Defendants' Motion for Summary Judgment are undisputed facts.

4. Plaintiff agrees that the facts set forth in Paragraph III.3 A-G of the **DPA** Defendants' Motion for Summary Judgment are undisputed.

IV.

1. Plaintiff's RICO claim is not barred by the statute of limitations.

2. The United States Supreme Court recently has addressed the issue of when a civil cause of action for violation of the Racketeer Influence and Corrupt Organizations Act ("RICO"), 18 U.S.C. §1964 accrues. *Klehr v. A.O. Smith Corp.*, 117 S.Ct. 1984 (1997). This Court has not had the opportunity to rule on the question a cause of action for civil RICO accrues subsequent to the United States Supreme Court's ruling in *Klehr*. Prior to *Klehr*, the Circuits were split three (3) different ways regarding the date upon which a cause of action for civil RICO accrued[1].

3. The Eighth, Tenth, and Eleventh Circuits apply a "injury and pattern" discovery accrual rule for civil RICO actions. *Klehr*, 117 S.Ct. at 1988-1989; *Association of Commonwealth Claimants v. Moylan*, 71 F.3d 1398, 1402 (8th Cir. 1995); *Bivens Gardens Office Bldg., Inc. v. Barnett Bank*, 906

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[1] The Fifth Circuit has yet to address the question in a published opinion which will have precedential value.

F.2d 1546, 1554-1555 (11th Cir. 1990); and, *Bath v. Bushkin, Gaims, Gaines & Jonas*, 913 F.2d 817, 820 (10th Cir. 1990)

4. Other circuits used forms of an "injury" discovery rule, without requiring that a plaintiff know or should know of the pattern of racketeering activity. *Klehr*, 117 S.Ct. at 1989; *Grimmett v. Brown*, 75 F.3d 506, 511 (9th Cir. 1996); *McCool v. Strata Oil Co.*, 972 F.2d 1452, 1464-1465 (7th Cir. 1992); *Rodriguez v. Banco Central*, 917 F.2d 664, 665-666 (1st Cir. 1990); *Bankers Trust Co. v. Rhoades*, 859 F.2d 1096, 1102 (2nd Cir. 1988); and, *Pocahantas Supreme Coal Co. v. Bethlehem Steel Corp.*, 828 F.2d 211 (4th Cir. 1987)

5. Alone, the Third Circuit applied a "last predicate act" rule which delayed the accrual of a civil RICO claim if further injury or further predicate acts occurred related to the pattern of racketeering activity, in which case accrual would be delayed until the time "when the plaintiff knew or should have known of the last injury or the last predicate act". *Keystone Ins. Co. v. Houghton*, 863 F.2d 1125, 1130 (3rd Cir. 1988)

6. The holding in *Klehr* did not distinguish between the injury rule and injury-plus-pattern rule. The Court only held expressly that the Third Circuit's "last predicate act" rule was improper.

7. Plaintiff argues that his RICO claims would be timely filed under either the Ninth Circuit rule or the Eighth Circuit rule.

8. Should the Court determine that the accrual of a claim for a violation of civil RICO should be knowledge of the injury and knowledge that the injury is part of

pattern of racketeering activity, Plaintiff's claims surely would be timely. According to his Declaration, attached hereto as Exhibit A, Plaintiff did not know of the pattern of racketeering activity undertaken by Defendants in conjunction with representatives of National Medical Enterprise and others until he learned of the criminal conviction of Brookhaven's parent company, Psychiatric Institute of America, sometime in June, 1994. Clearly, it is not reasonable to expect a young person to be able to investigate whether his injuries were part of a pattern of racketeering activity when he possesses neither the sophistication nor the resources of the United States Justice Department, which took some time to bring the pattern of racketeering activity in Brookhaven and other PIA facilities to light[2].

9. The United States Supreme Court's opinion in *Klehr* did not conclusively determine whether the test applied by the Eighth Circuit or the one applied by the Ninth Circuit would be the correct test. It only determined that the test applied by the Third Circuit was too liberal.

10. However, the Court's opinion is more consistent with the test articulated by the Eighth Circuit than with the one articulated by the Ninth Circuit.

---

[2] Defendants have judicially admitted that Brookhaven was a racketeering enterprise within the meaning of the RICO statute. In a case in which they are plaintiffs and various NME facilities or organizations and Peter Alexis are defendants, the Defendants herein, in their original petition in that case, acknowledge Brookhaven to be a RICO enterprise. See: Exhibit B.

We do not say that a pure injury accrual rule always applied to that modification in the civil RICO setting in the same way that it applies in traditional anti-trust cases. For example, *civil RICO requires not just a single act, but rather a 'pattern' of acts.* Furthermore, there is some debate as to whether the running of the limitations period depends on the plaintiff's awareness of certain elements of the cause of action. As we said earlier, however, for purposes of evaluation the 3rd Circuit's rule, we can assume knowledgeable parties. Hence, the special problems associated with a discovery rule . . . are not at issue. *Klehr v. A.O. Smith Corp.*, 117 S.Ct. 1990 (1997) (Emphasis added.)

Unlike the Klehrs, who clearly knew of a pattern of activity in similar cases, *Mark Rotella did not know and could not have known that his injuries were part of a pattern of racketeering activity* until he learned of the criminal conviction of PIA in June of 1994.

11. Should the Court retain the view of those Circuits which set the accrual date of a civil RICO cause of action at the time when a plaintiff learns of the injury as opposed to the date he or she learns of the pattern of racketeering, the application of the facts in this case to that rule does not square with the decisions in the cases which the Court has cited in previous orders.

12. In *McCool v. Strata Oil Co.*, 972 F.2d 1452, 1463-1466 (7th Cir. 1992), the Court found a fact issue existed as to whether or not investors knew of alleged fraud upon receiving documents which they signed to invest in an oil well. *Id.*, at 1466. In discussing whether or not the claimants had exercised due diligence in discovering the fraud,

the Court said that the Receipt and Working Agreement did not necessarily notify the investors that the contract gave them a "working interest" rather than the "tenancy in common" they claimed had been promised. *Id.* at 1462.

13. The Court opined that neither a reasonably prudent investor nor a non-specialist lawyer could be presumed to know the difference in the two terms. *Id.* By analogy, Mark Rotella, as a reasonable patient, could not be expected to ferret out the fact that he had been fraudulently hospitalized when investigators for [ ]he Federal Bureau of Investigation and the U.S. Attorney's Office expended months in research and discovery to uncover the facts that evidenced the fraud.

14. Another case frequently cited by the Court, *Beneficial Standard Life Ins. Co. v. Madariaga*, 851 F.2d 271 (9th Cir. 1988), supports Mark Rotella's contention that he has raised a fact issue concerning, and can establish, whether or not he had learned of the fraud.

15. The Court states: "Ordinarily we leave the question of whether a plaintiff knew or should have become aware of a fraud to the jury." *Id.* at 275. In that case, the District Court had found that knowledge of the fraud had not been acquired for purposes of accrual until the date of the perpetrator's *conviction for fraud.*

16. The Court remanded for determination of whether an internal audit which had taken place four (4) years prior to the conviction had given the plaintiff actual or constructive knowledge of the fraud.

17. Clearly, in *Beneficial* substantially more evidence was before the Court than in Mark's case, from which a trier

of fact could determine whether the plaintiff had knowledge of the fraud. Given that the *Beneficial* Court, using the injury-only rule, felt compelled to leave the issue up to the jury, the District Court should be under a greater compulsion to do so.

V.

1. The Defendants cannot have it both ways.

2. A close reading of the petition which is a part of Exhibit B[3] impels the conclusion that the Defendants herein are requiring that Mark Rotella have inferred something about the criminal activity ongoing during the time he was hospitalized at Brookhaven about which they themselves purport not to have had knowledge. Surely these Defendants, each of whom is a party to a civil RICO action brought by them collectively against National Medical Enterprises, Inc., affiliated organizations, and Peter Alexis, in which Brookhaven Psychiatric Pavilion is identified as a RICO enterprise from on or about November 1, 1985, through about August, 1993,[4] cannot require Mark to have more knowledge than they had. If the Defendants claim not to have known of this criminal activity at the time they treated Mark Rotella, then surely they, as ten (10) physicians who "received an excellent medical education and [have] always been held in high esteem by their colleagues, some of them have published articles in various medical journals, and others who have

[3] Plaintiff has highlighted the relevant portions on the Court's copy.

[4] Compare Exhibit B, Paragraphs 10 and 13.

taught at leading medical schools"[5] cannot hold Mark Rotella, who was under their care at Brookhaven while he was sixteen, seventeen and eighteen, a high school student who did not have a medical degree much less a college degree and obviously had less experience in business matters than physicians who were running their own professional associations and a partnership, to a standard higher than that to which the Defendants have held themselves in their own RICO proceeding against National Medical Enterprises.

3. In the alternative, if the Defendants knew of the existence of the RICO conspiracy at the time they treated Mark Rotella and did not disclose this fact to Mark, then they themselves are guilty of fraudulent concealment and have themselves made the best case for the tolling of Mark's statute of limitations.

CONCLUSION

For the reasons mentioned above, Plaintiff asks the Court to deny each of the Defendants' Motions for Summary Judgment brought against him, and to grant him such other relief as he may show himself justly to be entitled.

Respectfully submitted,

/s/ _____

ROBERT F. ANDREWS
State Bar No. 01248850

[5] Paragraph 9 of Exhibit B.

Robert F. Andrews
Attorneys at Law
A Professional Corporation
2909 Bank One Tower
500 Throckmorton Street
Fort Worth, Texas 76102
(817) 332-2215
(817) 335-8661 (facsimile)

MARTIN J. CIRKIEL
State Bar No. 00783829
902 Palm Valley Blvd.
Round Rock, Texas 78664
(800) 407-4945

ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

This is to certify that on the 3rd day of October, 1997, a true and correct copy of the above and foregoing **Plaintiff's Response to Defendants' Motions for Summary Judgment** was served upon the following counsel as indicated:

Joe Cleveland
McLean & Sanders
100 Main Street
Fort Worth, TX 76102-3090

Alan Campbell
Cowles & Thompson
901 Main Street, Suite 4000
Dallas, TX 75202-3793

John H. Martin
Thompson & Knight
1700 Pacific Ave., Suite 3300
Dallas, Texas 75201-4693

/s/ _____
ROBERT F. ANDREWS

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

MARK ROTELLA,	§	
Plaintiff	§	
	§	
VS.	§	
	§	
ANGELA M. WOOD, M.D.,	§	
GARY LEE ETTER, M.D.,	§	**NO: 4:97-CV-555-A**
WILLIAM M. PEDERSON, M.D.,	§	
GROVER LAWLIS, M.D.,	§	
DAVID R. BAKER, M.D.,	§	
LARRIE W. ARNOLD, M.D.,	§	
FRED L. GRIFFIN, M.D.,	§	
LESLIE H. SECREST, M.D.,	§	
JOHN M. ZIMBUREAN, M.D.,	§	
BRADFORD M. GOFF, M.D.,	§	
RONALD FLEISCHMANN,	§	
M.D., DALLAS PSYCHIATRIC	§	
ASSOCIATES, DAVID R.	§	
BAKER, M.D., P.A., LARRIE W.	§	
ARNOLD, M.D., P.A., LESLIE H.	§	
SECREST, M.D., P.A., WILLIAM	§	
M. PEDERSON, M.D., P.A.,	§	
FRED L. GRIFFIN, M.D., P.A.,	§	
RONALD FLEISCHMANN,	§	
M.D., P.A., BRADFORD M.	§	
GOFF, M.D., P.A., GROVER	§	
LAWLIS, M.D., P.A., ANGELA	§	
M. WOOD, M.D., P.A., JOHN	§	
M. ZIMBUREAN, M.D., P.A.,	§	
GARY LEE ETTER, M.D.,	§	
FRANK TRIMBOLI, M.D.,	§	
MYRON S. LAZAR, Ph.D.,	§	
	§	
Defendants.	§	

DECLARATION OF MARK DAVID ROTELLA

STATE OF TEXAS §

COUNTY OF DALLAS §

1. My name is Mark David Rotella. I am over the age of eighteen (18) years. I am a resident and citizen of the State of Texas. I am the Plaintiff in the above entitled and numbered cause. I am capable of making this Declaration, and the facts and opinions contained herein are true and correct and are based upon my personal knowledge and experience.

2. I was hospitalized at Brookhaven Psychiatric Pavilion from the time I was sixteen until I was eighteen. I was admitted to Brookhaven on an order of protective custody on February 19, 1985. I remained at Brookhaven until June 16, 1986, enduring 479 days confined in an acute care mental hospital. My primary attending psychiatrists during this time were Defendants Etter and Wood. Although I was held against my will at Brookhaven, I thought the doctors had a right to keep me in the hospital as long as they did.

3. I did not learn until the summer of 1994 any facts which would have led me to investigate whether or not the Defendants' treatment of me was part of an organized criminal endeavor or a pattern of racketeering activity. In June, 1994, I learned that Brookhaven's parent company, Psychiatric Institute of America, and a former Texas regional director, Peter Alexis, had pled guilty to charges of fraud in connection with the operation of PIA's hospitals including Brookhaven. I also became aware at that

time that Peter Alexis admitted he bribed the doctors who were treating me.

4. I knew I did not want to be at Brookhaven. I did *not* know that I was held there, against my will, in violation of my constitutional rights, and without the informed consent of wither [sic] me or my parents. I knew no facts at the time I was confined at Brookhaven that would have put me, then a sixteen-, seventeen-, and eighteen-year-old adolescent, on notice that I needed to investigate whether or not Brookhaven and the doctors who treated me there were part of an organized criminal group, or whether their activities exhibited a pattern of racketeering activity. I knew a lot of money was paid to the doctors, but I did not know or suspect there was fraud involved until criminal convictions occurred in 1994.

5. Each of the doctors whom I have sued in this action, with the exception of David Baker, filed suit against me in August, 1994, in judicial court in Dallas.

6. Only in mid-1994 had I begun to realize that the Defendants played on our (mine and my parents') emotions to keep me in that place. I understand now that they intended to keep me in there until my insurance ran out, no matter what. That was their goal and they did not care what happened to me.

7. Wendy Edelman urged me to file a lawsuit against the doctors in our communication on April 7, 1994, at Fridays restaurant. She told me that she considered doing so herself and that she felt like I really needed to file one.

8. On or about April 7, 1994, Ms. Edelman called me and asked me to meet her at Fridays restaurant because she

was in town. She told me that the doctors were being "tried and hung for what they had done". She told me that she wished that she had sued them for what they did to her. She also told me that Dr. Lawlis and his attorney had tried to persuade her to testify for him, but she had told him that she did not want to be involved in any of the litigation. On or about May 18, 1994, she called me to wish me happy birthday from her home in West Palm Beach. I recall asking her to provide me with the name of the attorney who had represented other persons against our doctors.

9. Sometime between May 18, 1994, and June 11, 1994, I also spoke with Ms. Edelman by telephone. On that occasion, she told me that Dr. Lawlis and his attorney had asked her to tape conversations between her and my attorney.

10. Finally, when I talked to Robert Andrews in April or May, 1994, I begin to realize for the first time that I was not wrong in my anger against Brookhaven, and that what they had done had not been right.

11. Prior to the time Dr. Wood and her colleagues filed suit against me, I was engaged in presuit negotiations with Brookhaven's parent company, National Medical Enterprises, Inc. (NME) and the DPA Defendants. The negotiations were successful with NME, but the DPA Defendants refused to enter into any settlement agreements.

12. I declare under penalty of perjury that the foregoing is true and correct.

13. Further. Declarant sayeth not.

DATED this 2nd day of October, 1997.

/s/ Mark David Rotella
Mark David Rotella,
Declarant

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

MARK ROTELLA,	§	
	§	
Plaintiff	§	
	§	
VS.	§	
	§	
ANGELA M. WOOD, M.D., GARY LEE ETTER, M.D., WILLIAM M. PEDERSON, M.D., GROVER LAWLIS, M.D., DAVID R. BAKER, M.D., LARRIE W. ARNOLD, M.D., FRED L. GRIFFIN, M.D., LESLIE H. SECREST, M.D., JOHN M. ZIMBUREAN, M.D., BRADFORD M. GOFF, M.D., RONALD FLEISCHMANN, M.D., DALLAS PSYCHIATRIC ASSOCIATES, DAVID R. BAKER, M.D., P.A., LARRIE W. ARNOLD, M.D., P.A., LESLIE H. SECREST, M.D., P.A., WILLIAM M. PEDERSON, M.D., P.A., FRED L. GRIFFIN, M.D., P.A., RONALD FLEISCHMANN, M.D., P.A., BRADFORD M. GOFF, M.D., P.A., GROVER LAWLIS, M.D., P.A., ANGELA M. WOOD, M.D., P.A., JOHN M. ZIMBUREAN, M.D., P.A., GARY LEE ETTER, M.D., FRANK TRIMBOLI, M.D., MYRON S. LAZAR, Ph.D.,	§	**NO: 4:97-CV-555-A**
	§	
Defendants.	§	

DECLARATION OF ROBERT F. ANDREWS

STATE OF TEXAS §

COUNTY OF TARRANT §

1. My name is Robert F. Andrews. I am over the age of eighteen (18) years. I am a resident and citizen of the State of Texas. I am the attorney of record for Plaintiff in the above entitled and numbered cause. I am capable of making this Declaration, and the facts and opinions contained herein are true and correct and are based upon my personal knowledge and experience.

2. Attached to this Declaration is a true and correct copy [of] Plaintiff's Original Petition filed by Angela M. Wood, M.D., et al., against National Medical Enterprises, Inc., et al., on February 23, 1995, in Dallas County, Texas. The copy attached hereto is a copy that was authenticated by each of the Movants, each of whom was a defendant in a case styled *John Frederick Schwertz, et al. v. John M. Zimburean, M.D., et al.*, Civil Action No. 4:95-CV-370-A.

3. It is presumed that, pursuant to the Rules of this Court and in the interest of judicial economy, the authenticity of this document would not be contested by the Defendants in a trial of this cause, and consequently, Plaintiff expects the authenticity of the document will be conceded by the Defendants at this stage of the proceeding as well. In any event, should the Defendants insist that Plaintiff expend costs in securing a certified copy of this document from the Dallas Circuit Clerk's office, and the Court require such of him, Plaintiff will comply.

4. I declare under penalty of perjury that the foregoing is true and correct.

5. Further, Declarant sayeth not.

DATED this 3 day of October, 1997.

/s/ Robert F. Andrews
Robert F. Andrews, Declarant

EXHIBIT B

CAUSE NO. 95-018

ANGELA M. WOOD, M.D., GARY LEE ETTER, M.D., GROVER LAWLIS, M.D., WILLIAM M. PEDERSON, M.D., LESLIE H. SECREST, M.D., JOHN M. ZIMBUREAN, M.D., LARRIE W. ARNOLD, M.D., BRADFORD M. GOFF, M.D., FRED L. GRIFFIN, M.D., RONALD FLEISCHMANN, M.D., DALLAS PSYCHIATRIC ASSOCIATES, A PARTNERSHIP, ANGELA M. WOOD, M.D., P.A., GARY LEE ETTER, M.D., P.A., WILLIAM M. PEDERSON, M.D., P.A., LESLIE H. SECREST, M.D., P.A., JOHN M. ZIMBUREAN, M.D., P.A., LARRIE W. ARNOLD, M.D., BRADFORD M. GOFF, M.D., P.A., FRED L. GRIFFIN, M.D., P.A., RONALD FLEISCHMANN, M.D., P.A.,	§	IN THE DISTRICT COURT
Plaintiffs,	§	
v.	§	JUDICIAL DISTRICT
NATIONAL MEDICAL ENTERPRISES, INC., N.M.E. PSYCHIATRIC HOSPITALS, INC. f/k/a PSYCHIATRIC INSTITUTES OF AMERICA, N.M.E. PSYCHIATRIC PROPERTIES, INC., and PETER ALEXIS,	§	(Filed Febr. 23, 1999)
Defendants.	§	DALLAS COUNTY, TEXAS

PLAINTIFFS' ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

Now Come Angela M. Wood, M.D., Gary Lee Etter, M.D., Grover Lawlis, M.D., William M. Pederson, M.D., Leslie H. Secrest, M.D., John M. Zimburean, M.D., Larrie W. Arnold, M.D., Bradford M. Goff, M.D., Fred L. Griffin, M.D., Ronald Fleischmann, M.D., Dallas Psychiatric Associates, a Partnership, Angela M. Wood, M.D., P.A., Gary Lee Etter, M.D., P.A., Grover Lawlis, M.D., P.A., William M. Pederson, M.D., P.A., Leslie H. Secrest, M.D., P.A., John M. Zimburean, M.D., P.A., Larrie W. Arnold, M.D., Bradford M. Goff, M.D., P.A., Fred L. Griffin, M.D., P.A., Ronald Fleischmann, M.D., P.A., ("Plaintiffs"), and file this their Plaintiffs' Original Petition, and for cause of action, would show unto this court as follows:

PARTIES

1. Plaintiffs are largely residents of Dallas County, Texas.

2. National Medical Enterprises, Inc. is a corporation organized and existing under the laws of the State of Nevada, with its principal place of business located at 2700 Colorado Avenue, Santa Monica, California 90404. On information and belief, the President of the corporation is Jeffrey C. Barbakow. NME may be serviced with process by serving it[ ] registered agent, Corporation Trust Company of Nevada, One East First Street, Suite 1600, Reno, Nevada 89501.

3. N.M.E. Psychiatric Hospital, Inc. is a Delaware corporation which may be served with citation upon CT

Corporation System, its registered agent for service at 350 N. St. Paul Street, Dallas, Texas 75201.

4. N.M.E. Psychiatric Properties, Inc. is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business located at 2700 Colorado Avenue, Santa Monica, California 90404. NME PPI and PIA may be served with process by serving its registered agent, Corporation Trust Company, Corporation Trust Center, 209 Orange Street, Wilmington, Delaware 19801. On information and belief, N.M.E. Psychiatric Properties, Inc. is a holding company that, through its subsidiaries, either operates or previously operated approximately seventy (70) psychiatric health facilities throughout the country. On information and belief, these hospitals are owned and/or operated by N.M.E. Psychiatric Hospitals.

5. Psychiatric Institutes of America was formerly a corporation organized under the laws of the State of Delaware with its principal place of business at 1010 Wisconsin Avenue, Northwest, Washington, D.C. During the period from 1982 to December, 1991, PIA owned and directed the operation of various psychiatric hospitals located throughout the United States that provided inpatient and outpatient psychiatric treatment. On information and belief. These hospitals are the same as N.M.E. Psychiatric Hospitals. As of 1991, there were more than seventy (70) hospitals operated by PIA in 22 states.

6. Defendant Alexis is a resident of Dallas County, Texas, who may be served with citation at his residence at 3420 Centenary, Dallas, Texas 75225, Defendant Alexis is an "individual capable of holding a legal or beneficial

interest in property" and, as such, constitutes a "person" within the meaning of 18 U.S.C. § 1961(3).

JURISDICTION AND VENUE

7. The matters in controversy are within the jurisdictional limits of this court. This cause of action accrued, in whole or in part, in Dallas County, Texas. At all times relevant to the causes of action, Defendants N.M.E. had continuing and systematic contacts with Texas and was doing business in this State. The Defendants N.M.E. did business in Texas by, among other acts, entering into contracts, by mail or otherwise with residents of the State of Texas; and by committing a tort or torts in this State. The causes of action made the subject matter of this Petition arise out of such contacts and business.

8. Venue is proper in Dallas County because Defendants N.M.E. has agents or representatives in this county; or alternatively, because Defendants N.M.E. agents or representatives in this county at the time the causes of action made the subject matter of this Petition arose. In addition, Defendant Alexis resides in Dallas County, Texas.

FACTUAL BACKGROUND

9. Plaintiffs are licensed psychiatrists in the State of Texas. Each Plaintiff received an excellent medical education and has always been held in high esteem by their colleagues, some of whom have published articles in various medical journals, and others who have taught at leading medical schools. Prior to the events which give

rise to Plaintiffs' claims, Plaintiffs had never been suspected or accused of criminal or fraudulent conduct in the care of patients.

10. Commencing on or about November 1, 1985, and continuing through about August 1993, at various times Defendants N.M.E. owned and operated seven (7) psychiatric hospitals in North Texas, to wit; Brookhaven Psychiatric Pavilion in Dallas, Texas; Cedar Creek Hospital in Amarillo, Texas; Psychiatric Institute of Fort Worth in Fort Worth, Texas; Willowbrook Hospital in Waxahachie, Texas; Bedford Meadows Hospital in Bedford, Texas; Twin Lakes in Denton, Texas, and Arbor Creek in Sherman, Texas. In addition, Defendants N.M.E. owned and operated eight (8) other psychiatric hospitals in other cities in Texas. The hospitals in Texas were organized into one region called the "Texas Region", also known as "Region 6".

11. Commencing on or about November 1, 1985, Defendant Alexis was employed by Defendants N.M.E. Defendant Alexis was employed as the hospital administrator of Psychiatric Institute of Fort Worth from November 1985 until June 1989. In June 1989, Defendant Alexis was promoted to regional vice-president of Defendants N.M.E. for the Texas Region. Defendant Alexis also served as the acting regional vice-president for the Texas Region beginning in January 1989. At that time, the headquarters for Defendants N.M.E's Texas Region was located in Dallas, Texas. As regional vice-president, Defendant Alexis oversaw the operation of all of Defendant N.M.E.'s hospitals in the Texas Region, with the exception of one hospital in San Antonio, Texas, and with the further exception that Defendant Alexis helped start

Cedar Creek Hospital, but by the time Cedar Creek Hospital was actually opened it was transferred to another vice-president's region.

CIVIL RICO

12. Beginning on or about November 1985, and continuing thereafter, Defendant Alexis entered into an agreement with other officers and employees of Defendants N.M.E., including senior corporate officers, attorneys within the legal department, and board members of Defendants N.M.E. and with various patient referral sources to commit the offenses of illegal remuneration for patient referrals, in violation of the Commercial Bribery Statute set forth in § 32.43, Texas Penal Code, and use of the mail or any facility in interstate commerce to promote unlawful activity, in violation of Title 18, United States Code, § 1952.

13. Defendant Alexis and other officers and employees of Defendants N.M.E. associated together to function as a continuing unit for the common purpose of committing acts of commercial bribery. The continuing unit formed by that association in fact constituted a *RICO* "enterprise" within the meaning of 18 U.S.C. § 1961(4), this association in fact was an enterprise engaged in and affecting interstate commerce. More specifically, Defendant Alexis and the other officers and employees of Defendants N.M.E. entered into agreements to knowingly and willfully offer and pay remuneration directly and indirectly, in cash and in kind, to doctors, therapists, psychiatrists and psychologists and other referral sources constituting fiduciaries as that term is defined in § 32.43,

Texas Penal Code, to refer individuals constituting beneficiaries as that term is defined in § 32.43, Texas Penal Code, to employees at the Psychiatric Hospitals described above for the furnishing of services. In this connection, Plaintiffs allege further that each one of the Psychiatric Hospitals also constitutes a RICO "enterprise" within the meaning of 18 U.S.C. § 1961(4) engaged in and affecting interstate commerce.

14. It was an integral part of the agreement between the Defendant Alexis and other officers and employees at Defendants N.M.E. that Defendant Alexis would place long distance phone calls in interstate commerce and would travel and cause others to travel in interstate commerce with the intent to promote, manage, establish and carry on this unlawful activity in violation of § 32.43, Texas Penal Code, knowing that such unlawful activity violated the laws of the State of Texas.

15. Beginning in about November 1985 and continuing thereafter Defendant Alexis and other employees and officers of Defendants N.M.E. intentionally and knowingly did the following:

a. Defendant Alexis and other employees and officers of Defendant N.M.E. solicited and caused to be solicited doctors, therapists, social works [sic] and other referral sources to refer potential psychiatric patients to Psychiatric Hospitals operated by Defendants N.M.E. and located in Texas for medical services and treatment. In return for referring patients to Defendants N.M.E.'s psychiatric hospitals, Defendant Alexis and other employees and officers of Defendants

N.M.E. paid and caused to be paid remuneration directly and indirectly to these referral sources.

b. Defendant Alexis and other employees and officers of Defendants N.M.E. entered into contracts with doctors and therapists that provided the doctors and therapists with titles related to the operation of Defendants N.M.E.'s hospitals in Texas, and particularly in North Texas, that provided those doctors and therapist[ ] with annual salaries when, in fact, these contracts were used to pay the doctors and therapists remuneration for referring patients to Defendants N.M.E.'s hospitals for medical treatment. Defendants N.M.E.'s legal department, located in Washington, D.C., assisted Defendant and other employees and officers of Defendants N.M.E. in disguising the true purpose of their arrangements to remunerate doctors and therapists for referring patients to Defendants N.M.E.'s hospitals. The amount of salaries paid to the doctors and therapists under such contracts was related to the number of patients referred to the hospitals and was not related to any duties performed by the doctors and therapists for the hospitals.

c. Defendant Alexis and other employees and officers of Defendants N.M.E. paid for and caused the payment for office furniture and equipment, salaries of office staff, and other office expenses for doctors and therapists who referred patients to Defendants N.M.E.'s hospitals for medical services. Such

payments for office furniture and equipment, salaries and other office expenses were remuneration for the referral of patients to Defendants N.M.E.'s hospitals for medical services.

d. Defendant Alexis and other regional and corporate officials of Defendants N.M.E., while Defendant Alexis was regional vice-president of the Texas Region, met on a routine basis in Washington, D.C. and shared information on the solicitation and remuneration of referral sources at Defendants N.M.E.'s hospitals throughout the country.

e. Defendant Alexis and others for whose conduct Defendants N.M.E. is legally accountable, did travel in interstate commerce, use the mail and make long distance telephone calls in interstate commerce and discussed the payment of referral sources at Defendants N.M.E.'s facilities across the United States, with the intent to promote, manage, establish, carry on, and facilitate the promotion, management, establishment and carrying on of an unlawful activity, to wit; commercial bribery in violation of § 32.43 of the Texas Penal Code; that is agreeing to pay money and other benefits to fiduciaries with the understanding that the money and other benefits to fiduciaries would influence the conduct of the fiduciaries in relation to the affairs of their beneficiaries.

16. During the existence of the association in fact, in order to accomplish the unlawful activities described above, the following predicate acts were knowingly committed by Defendant Alexis:

a. In or about June 1989, Defendant Alexis, while acting as regional vice-president for Defendants N.M.E. for the Texas Region used Defendants N.M.E. to enter into a contract with a medical doctor that provided that the doctor was to be paid an annual salary as a high level official of Psychiatric Institute of Fort Worth, the annual salary was awarded to the doctor as a form of remuneration to the doctor for [the] number of patients he had referred to Psychiatric Institute of Fort Worth;

b. In or about June 1989, Defendant Alexis, while acting as regional vice-president for the Texas Region of Defendants N.M.E., caused Defendants N.M.E. to enter into a contract with a mental health counselor which provided that the counselor was to be paid an annual salary by Psychiatric Institute of Fort Worth;

c. On or about March 15, 1990, Defendant Alexis, while acting as regional vice-president for the Texas Region of Defendants N.M.E., caused Defendants N.M.E. to enter into a contract with a medical doctor which provided that the doctor was to be paid an annual salary as a high level official at Cedar Creek Hospital in Amarillo, Texas. This salary was actually payment in remuneration for the doctor referring patients to Cedar Creek Hospital.

17. The Defendants have thus engaged in acts indictable under § 32.43, Texas Penal Code, and under 18 U.S.C. § 1952, thereby committing acts of racketeering within the meaning of 18 U.S.C. § 1961(1)(B).

18. Each of the Defendants engaged in or conspired in the commission of two or more of the predicate acts of commercial bribery and use of the mail or any facility in interstate commerce to promote unlawful activity described in the preceding paragraphs in violation of 18 U.S.C. §§ (a)-(d) within a period of ten years, and each committed at least one such act of racketeering after the effective date of RICO (i.e., October 15, 1970). Defendants Alexis and N.M.E. thus engaged in a "pattern of racketeering activity" within the meaning of 18 U.S.C. § 1961(5).

19. As alleged above, Defendants Alexis and N.M.E. participated and engaged in a pattern of racketeering activity receiving income that was derived indirectly from that pattern. This income was used to establish and operate Psychiatric Hospitals in the State of Texas, each of which constituted an enterprise within the meaning of 18 U.S.C. § 1961(4), as well as to finance the continuing operations of Defendants N.M.E. Defendants thereby engaged in a pattern of racketeering activity in violation of 18 U.S.C. § 1962(a). Furthermore, by virtue of the continuing acts of commercial bribery, Defendant Alexis, in combination with other officers and employees of Defendants N.M.E., maintained control of the psychiatric hospitals in Region Six and Defendants N.M.E. in violation of 18 U.S.C. § 1962(b). In addition, by virtue of the same acts of commercial bribery, through a pattern of racketeering activity, Defendant Alexis and other offices and employees of Defendants N.M.E. participated in the operation of the psychiatric hospitals in Region Six in violation of 18 U.S.C. § 1962(c).

20. At all relevant times, Defendants N.M.E. had the right to direct and control the conduct of Defendant Alexis and the other persons who were employed by Defendants N.M.E. as officers, agents and employees, including senior corporate officers and attorneys within the legal department. Furthermore, each officer, agent and employee was acting within the course of employment and the scope of the agency relationship that each such person had with Defendants N.M.E. Accordingly, Defendants N.M.E. is legally accountable for the unlawful conduct of its officers, agents and employees committed in violation of 18 U.S.C. §§ (a)-(d) under principles of respondent [sic] superior and the law of agency.

21. As a direct and proximate result of the Defendants' violation of 18 U.S.C. §§ 1962(a), (b), (c) and (d), Plaintiffs have suffered damages in an amount within the jurisdictional limits of the Court and have been injured in their business or property by reason of each Defendant's RICO violations. Plaintiffs have been further injured in their business or property by the false, fraudulent and defamatory statements made by Defendants wherein Defendants stated that Defendant Alexis, while acting as regional vice-president for the Texas Region of Defendant N.M.E., caused Defendants N.M.E. to enter into a contract with a professional association of psychiatrists which provided that the association was to be paid a determined amount of money per year by Brookhaven Psychiatric Pavilion in Dallas, Texas and that such payment was actually remuneration for the members of the association referring patients to Brookhaven Psychiatric Pavilion. Pursuant to the Civil Remedy Provisions of 18 U.S.C. § 1964(c), Plaintiffs are thereby entitled to recover

threefold the damages that it has suffered, together with its costs of suit and reasonable attorneys' fees.

NEGLIGENCE PER SE

Plaintiffs hereby repeat and re-allege paragraphs 9 through 21, inclusive.

22. The wrongful conduct of Defendant Alexis and N.M.E., by and through their agents, and officers and/or employees, in committing the acts of commercial bribery in violation of § 32.43, Texas Penal Code, constitutes negligence per se.

23. As a direct and proximate result of the Defendants' negligence per se, Plaintiffs have suffered commercial and economic losses and have lost profits and income in an amount far in excess of the minimum jurisdictional limits of the Court.

24. The wrongful conduct of Defendant Alexis and Defendants N.M.E. committed by its agents, employees, vice-principals and/or management , was heedless and reckless and was done with an actual conscious disregard for the rights, safety and welfare of Plaintiffs. Additionally, the above-described acts and/or omissions were intentional, willful or wantonly reckless, or done with conscious indifference or reckless disregard for the rights of others. Defendants' conduct created an extreme risk of harm and they were aware of the extreme risk. Accordingly, Plaintiffs are also entitled to recovery exemplary damages from each Defendant.

NEGLIGENCE

Plaintiffs hereby repeat and re-allege paragraphs 9 through 24, inclusive.

25. The conduct of Defendant Alexis and other offices and employees of N.M.E., all of which was unbeknownst to Plaintiffs at the time, was a result of negligent supervision and inspection of the operations and conduct of its employees and agents. Further, unbeknownst to Plaintiffs at the time, Defendants N.M.E. were negligent in failing to implement policies, procedures and/or training to recognize and/or remedy any conduct that might approach the level complained of herein.

26. As a direct and proximate result of the Defendants' negligence, Plaintiffs have suffered commercial and economic losses and have lost profits and income in an amount far in excess of the minimum jurisdictional limits of the Court.

27. The negligent conduct of Defendant Alexis N.M.E. committed by their agents, employees, vice-principals and/or management, was heedless and reckless and was done with an actual conscious disregard for the rights, safety and welfare of others. Additionally, the above-described action and/or omissions were willful, wantonly reckless, or done with conscious indifference or reckless disregard for the rights of others. As a result, Defendants are guilty of gross negligence and Plaintiffs are entitled to recover exemplary damages from each Defendant.

CIVIL CONSPIRACY

28. The wrongful conduct of Defendant Alexis and N.M.E., by and through their agents, officers and/or employees, previously described, constituted a civil conspiracy.

29. Plaintiffs would show that two or more persons who were agents, officers and/or employees of the Defendants came to a meeting of the minds on the object or course of action which was unlawful. Further, Defendants, by and through its agents, officers and/or employees, conspired and committed overt acts which proximately resulted in damages to Plaintiffs.

WHEREFORE, PREMISES CONSIDERED, Plaintiffs pray that the Defendants be cited to appear and answer the allegations and that upon final hearing, Plaintiffs have judgment of and from the Defendants, jointly and severally, as follows:

a. For an award of all actual, compensatory, consequential, direct and/or indirect past and future damages in an amount to be determined as fair and reasonable by the trier of fact;

b. For punitive damages and/or treble damages pursuant to 18 U.S.C. § 1964(c) to be awarded against Defendants as a result of Defendants' unlawful acts as an example to others, and as a penalty or by way of punishment in addition to any amount of actual damages and in an amount to be determined to be fair and reasonable by the trier of fact;

c. For reasonable attorneys' fees pursuant to 18 U.S.C. § 1964(c) and Tex. Bus. & Comm. Code § 15.01 et seq.;

d. For all costs of court and/or expenses allowed by the Texas Rules of Civil Procedure and/or deemed appropriate by the Court;

e. For prejudgment interest at the highest applicable legal rate for the time period allowed by law;

f. For interest at the highest legal rate per annum from the date of judgment until collected; and

g. For such other and further relief, general or special, legal or equitable, to which Plaintiffs may show themselves to be justly entitled, either by this pleading or any amendment or supplement thereto.

Respectfully submitted,

SMITH & ULOTH, P.C.

By: /s/ William A. Smith
William A. Smith
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ATTORNEYS FOR PLAINTIFFS

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

Mark Rotella, Plaintiff	§	
vs.	§	NO.: 4:97-CV-555-A
Angela M. Wood, M.D., et al., Defendants.	§	

DEFENDANTS WOOD AND ETTER'S REPLY TO PLAINTIFF MARK ROTELLA'S RESPONSE TO MOTIONS FOR SUMMARY JUDGMENT OF DEFENDANTS LAWLIS, WOOD, ETTER AND DPA

(Filed Oct. 20, 1997)

Defendants Angela M. Wood, M.D., Angela M. Wood, M.D, P.A., Gary Lee Etter, M.D. and Gary Lee Etter, M.D., P.A. (collectively referred to as "Defendants Wood and Etter"), file this Reply to Plaintiff's Response to Defendants' Motions for Summary Judgment and respectfully show the Court as follows:

I.

Defendants Wood and Etter have moved for summary judgment on the ground that Plaintiff Mark Rotella's ("Rotella") RICO claim is barred by the four-year limitations period set forth in *Agency Holding Corp. v. Malley-Duff & Assoc.*, 483 U.S 143, 156 (1987). In response to this motion, Rotella attempts to rely on the recent decision in *Klehr v. A.O. Smith Corp.*, 117 S.Ct. 1984 (1997) for the proposition that a RICO cause of action does not accrue until the plaintiff has (1) knowledge of the alleged

injury; and (2) knowledge that the injury is part of a pattern of racketeering activity (the so-called "injury and pattern" accrual rule).

A. The *Klehr* opinion does not assist Plaintiff's claim.

Rotella contends that the Supreme Court's decision in *Klehr* is more consistent with the "injury and pattern" rule than with the rule adopted by the majority of the courts of appeals, which ties the accrual of a plaintiff's RICO claim to the time he knew or should have known of his injury. However, contrary to Rotella's argument, *Klehr* simply clarified the Supreme Court's position that the "last predicate act" accrual rule, adopted by the Third Circuit Court of Appeals, is not a proper interpretation of the law. In reaching this conclusion, the Court specifically stated that its holding did not resolve conflicts among the remaining courts of appeals regarding whether to apply the "injury and pattern" rule, or the pure "injury" rule.

The Supreme Court reserved the question of whether to apply the "injury and pattern" versus the pure "injury" rule for a future date. Nevertheless, it did opine that the Third Circuit rule is incorrect, in part, because it is inconsistent with the ordinary Clayton Act rule that "a cause of action accrues and the statute begins to run when a defendant commits an act that injures a plaintiff[]. . . . " *Klehr*, 117 S.Ct. at 1990, quoting *Zenith Radio Corp. v. Hazeltine Research, Inc.*, 91 S.Ct. 795, 806 (1971); *Connors v. Hallmark & Son Coal Co.*, 935 F.2d 336, 342 n. 10 (D.C. Cir. 1991). The *Connor* case is a clear statement of the pure "injury" accrual rule.

B. This Court should continue to apply the rule applied by a majority of the courts.

As this Court is aware, *Schwertz v. Zimburean*, No. 4:95-CV-370-A, slip op. at 14-17 (N.D. Tex. June 25, 1996), *aff'd*, No. 96-11155 (5th Cir. July 7, 1997), *rehearing denied*, (August 14, 1997), previously adopted the majority rule (the pure "injury" rule), which ties the accrual of a plaintiff's RICO claim to the time he knew or should have known of his alleged injury. The *Schwertz* decision was affirmed by the Fifth Circuit ***after*** the Supreme Court issued the *Klehr* decision. In fact, the Fifth Circuit specifically stated that it waited for the *Klehr* opinion before rendering a decision, but that *Klehr* ultimately could not save the RICO claim. *Schwertz*, No. 96-11155 (5th Cir. July 7, 1997) (per curiam), *rehearing denied*, (August 14, 1997). Thus, based on this Court's previous decision in *Schwertz* and the Fifth Circuit's affirmance of that decision, the pure "injury" rule must be applied to determine whether Rotella's RICO claim is barred by limitations.

C. Discovery of the alleged injury is the appropriate standard.

Rotella asserts that his RICO claim is not barred by limitations even assuming the pure "injury" accrual rule is the appropriate test. In support of this argument, Rotella maintains that limitations did not begin to run until he learned that the defendants had allegedly engaged in fraud or that he allegedly had been fraudulently hospitalized. However, the test is not whether Rotella knew or should have known of the alleged fraud. Rather, the test is whether Rotella knew or should have

known of the "injury" suffered as a result of the alleged fraud. *McCool v. Strata Oil Co.*, 972 F.2d 1452, 1464-65 (7th Cir. 1992) ("a RICO claim accrues when the plaintiff discovers her injury, even if she has not yet discovered the . . . racketeering"); *Beneficial Standard Life Ins. Co. v. Madriaga*, 851 F.2d 271, 274-75 (9th Cir. 1988) ("accrual . . . is determined according to the date on which injury occurs"). Although Rotella attempts to distinguish these cases, his argument is abased solely on the fact that, arguably, some time passed before the plaintiffs in *McCool* and *Beneficial* gained knowledge of or could have discovered their alleged injury. In this case, the injury Rotella complains of is that he was hospitalized against his will. And, by his own declaration, Rotella states that he knew that he was held against his will at Brookhaven at the time of his hospitalization – between February 19, 1985 and June 16, 1986. Thus, because Rotella Knew or should have known of any alleged injury he suffered more than four (4) years prior the time he filed his lawsuit, Rotella's RICO claim is barred by limitations as a matter of law.

II.

For the reasons stated, Defendants Wood and Etter respectfully request that their motion for summary judgment be granted, that judgment be entered, that Rotella take nothing by his suit, and that they be granted such

other and further relief, both at law and in equity, to which they may show themselves to be justly entitled.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was forwarded by First Class mail to opposing counsel:

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and to all other counsel of record via First Class mail.

Dated this 20th day of October, 1997.

/s/ Adrienne E. Dominguez
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